DR. AMBEDKAR AS THE LAW MINISTER AND A MEMBER OF OPPOSITION IN THE INDIAN PARLIAMENT FEBRUARY 9, 1951 TO APRIL 21, 1951

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* DENTISTS (AMENDMENT) BILL

The Minister of Law (Dr. Ambedkar) : As the Hon. the Health Minister is ill, I am asked to take charge of this Bill and I therefore beg to move:

"That the Bill to amend the Dentists Act, 1948, be taken into consideration."

The Bill is a very short one and it does not involve any controversial matters. The Dentists Act of 1948 came into force on the 29th of March 1948. It was made applicable to Part A, Part C and Part D States. Under Section 49 of that Act, it is provided that no person shall be entitled to practise dentistry after the 28th March 1950 unless his name appears on a register of dentists which the Act required should be prepared in accordance with the rules contained therein. It was hoped that that register would be ready by the 28th of March 1950. Consequently, the operative portions of this Act were so framed as to come into operation on the 28th March 1950. Unfortunately, this expectation has not been fulfilled. It was reported from various States that the register would not be ready by the 28th March 1950 and consequently it became necessary to extend the period by one year in order to enable the States concerned to prepare the register. As the Parliament was not then sitting, Government issued an Ordinance giving effect to the necessary provision expending the period up to the 28th March 1951. This Bill is intended to convert the Ordinance into law. The main provision therefore is to extend the period for the purpose of preparing the register.

Advantage has been taken of the present occasion to amend the law in order to remove some of the difficulties which have been felt in giving effect to the original

Act. Firstly, the original Act contained two provisions. One provision was not to allow any person who was not placed on the register to be employed in Government hospitals. Obviously, it was expected that this provision would become operative after the registers ready. As the registers are not ready, persons who have not been placed on the register by reason-not of their not being qualified, but of the register not being ready would become disabled from holding any office in Government hospitals. Therefore, it has become necessary to extend the period and permit such persons to hold office notwithstanding the fact that they are not placed on the register.

Secondly, there is a Dental School in Bengal which used to grant Diplomas in Dentistry. At the time when the Act was passed there was a controversy as to whether the diplomas granted by this Dental School of Bengal should be recognised to enable persons holding diploma to be placed on the register. It was felt that the diplomas granted by the Dental School of Bengal were not sufficiently qualified to place them on the register. There has been considerable agitation by persons holding the diploma granted by the Dental School of Bengal that this disability should be removed. A compromise has been suggested by the Government of West Bengal according to which persons who have received their diploma before the year 1940, subject to certain conditions, may be treated as persons qualified to be entered upon the register. That compromise is also given a place in this Bill.

The Bill, therefore, contains three provisions:

(1) to extend the period, (2) to permit names of persons holding diplomas of the Dental School of Bengal in certain circumstances to be placed on the register and (3) to continue the employment of unregistered dentists in the Government hospitals till 1951 until the register is prepared.

This is all that the Bill contains and I hope that the House will not find any difficulty in giving its assent to the Bill.

Mr. Speaker: motion moved :

"That the Bill to amend the Dentists Act, 1948, be taken into consideration. "

Shri Sidhva (Madhya Pradesh) : First of all I take strong exception to the issue of an ordinance when the House was sitting in the month of March.

Dr. Ambedkar: The ordinance was issued some time in May. I wish that the points that were raised by my hon. friends Mr. Sidhva and Pandit Thakur Das Bhargava had been reserved by them to the time when their amendments were taken up. It becomes somewhat embarrassing to reply on matters which would, I have no doubt, be raised again when their amendments are moved. But, I cannot help now having to reply to the points raised by them: I shall do so rather briefly, because I know I shall have to say.....

Mr. Speaker : I do not propose to allow any arguments on the amendments.

Pandit Thakur Das Bhargava : I am not going to move any amendment if my hon. friend dose not accept it.

Dr. Ambedkar : Mr. Sidhva has raised one or two points. The first point raised was why an Ordinance was made when the House was in session. The answer to that is two-fold. The first is this. The first question that was made to the Government of India in the matter of extension of time for the preparation of the Register came from the Government of Madras, and that too on or about the 15th of March 1950. That mean that only 13 days had been left for the period for the preparation of the roll to expire. That is one reason the second reason is that after the receipt of this letter from the Government of Madras, informing the Government of India that it was not possible for them to complete the Register, naturally, it was necessary for the Government of India to find out from other States as to whether they were in a position to prepare their list by the date fixed, or whether they too wanted some extension. Naturally, there ensued correspondence between the Government of India and the various other States.

That undoubtedly took time, and must take time, with the result that by the time the Government of India had received the replies and was able to assess whether an amendment in terms proposed by the Government of Madras was necessary, Parliament had been prorogued. That is the reason why the measure could not be brought up before the recess.

The second point raised by my friend Mr. Sidhva was this that he did not see any reason why we should make a statutory provision for the recognition of certain qualifications granted by the Bengal Dental School. According to him that was a matter which by the Act is left to the Dental Council. Now, I think my friend Mr. Sidhva has missed one important point and it is this. The power to grant recognition vested in the Council relates to qualifications or degree granted by schools to existence; but we are dealing with a matter in which degree and diplomas have been granted by a body which has become defunct. Consequently, it is for the Government of the day to decide whether the degree granted by a school giving tuition in dentistry were worthwhile recognition or not. It is not a matter which should be left to the Bengal Council under section 10, sub-clause (2). The word is " grants ″ which means " is granting at present " and not diplomas which have been granted before. That being so it cannot be a matter which could be left easily to be dealt with by the Dental Council under its power, and if we have to amend the Schedule, then that must be done by the law itself. That is why a legal provision is made in the Bill to cover that particular matter.

Now, what I have said with regard to the Bengal Dental School also applies to what my friend Pandit Thakurdas Bhargava said on the very same question.

I come now to the points raised by Mr. Kamath. The first point raised by him

was more or less of a technical character. If I understood him correctly, he said that the law required that the Register should be ready on the 28th March, 1950, and that if a person was not on the Register, then under the provisions of Section 46 and 49, he incurs certain penalties, while the Ordinance which exempted the person concerned from these penalties came into operation on the 29th May, 1950. There is, therefore, a two months' period in which a person not being on the Register and continuing to practise or holding office was liable to certain penalties. What is the position with regard to these persons ? I think my friend Mr. Kamath, if he had read clearly the terms of the amendment proposed in the Bill itself, he would have seen that the provisions say that :

" In sub-section (3) of section 46 and sub-section (1) of section 49 of the said Act, for the words ' two years ' the words ' three years ' shall be substituted and shall be deemed always to have been substituted."

Therefore, it is clear that that point has been adequately covered by the present clause.

Shri Kamath : My point was that if during these two months, from March 29th to May 29, if a dentist had not been registered, then under the Act, and because the Ordinance had not come into force, how could mere executive instruction from the Government prevent a prosecution, or some other penalty being imposed on that dentist ?

Dr. Ambedkar : I quite agree that that could not have prevented prosecution. But fortunately no such case happened and it cannot happen now because the period is carried back to the original Act.

Shri Kamath : But then, Sir. . . ..

Mr. Speaker : Order, order. The point is very clear.

Dr. Ambedkar : My friend Mr. Kamath in dealing with the reasons as to why this Bill was brought in, has made, if I may say so, certain very serious allegations. The contention on behalf of the Government is that this Bill has become necessary by reason of the fact that the States which were required to carry out the provisions of preparing the list have not been able to do so. My friend suggests that there is another reason, and that reason is that there are certain British dentists working in this country who do not propose to become domiciled and get themselves registered, and that this Bill is intended to benefit them. Now, I first of all do not understand how an extension of one year is going to benefit a British dentist working here who has no intention of becoming a domicile of this country. I cannot understand it. But if my friend persists in making that suggestion, which I think is a very serious allegation against an hon. Member

of Government, then it should be his duty when that Member returns, to specifically put the question and ask her reply, whether this was the real motive in bringing forward this particular Bill. I am unable to give any categorical answer;

but I may say that I find it extremely different to believe that an hon. member of Government should venture to bring forth such a Bill for no other except, the paltry purpose of benefiting one or two European dentists now in this country. It seems to me a most extravagant allegation.

Shri Kamath : I did not say it is the only purpose, it may be one of the purposes.

Mr. Speaker: But still, the suggestion is very uncharitable.

Dr. Ambedkar : On that point also I would like to point out to him, in answer to a question that he asked, namely, to state the present position, that all the States, who were written to in order to find out how much time they would find it necessary to prepare the register, have replied that they would require not less than one year. And the Bombay Government which may be given the credit of having a more efficient administrative machinery than others, insisted that they should have two years. I think that in itself would suffice to dismiss the suggestion made by my friend Mr. Kamath that this Bill was intended to protect some Britishers in this country.

I do not think that there is any point which has been raised to which I have not adverted in the course of my reply. The Bill, as it is, is a very simple, non-controversial one. It has arisen not because of the fault of the Central Government, but because of the other burdens carried on by the Provincial Government, they could not find the time to bring a particular provision of the Act into operation. I do not know whether we can do anything else except to help the Provincial Governments to give effect to this piece of legislation and being the Dentists Act into operation as early as possible.

Mr. **Speaker :** The question is :

" That the Bill to amend the Dentists Act, 1948, be taken into consideration."

The motion was adopted. Clause 2 was added to the Bill.

Clause 3 (Amendment of section 46 and section 49, Act XVI of 1948)

Shri Kamath : I beg to move :

" In clause 3, in the proposed amendment to sub-clause (3) of section 46 and sub-section (1) of section 49 of the Dentists Act, 1948, for ' three years ', substitute ' two years and six months'."

The present clause has been inserted so as to enable State Governments to complete their registers of dentists under section 46 and 49 of the Act. This is a retroactive piece of legislation inasmuch as the words used in the clause are " and shall be deemed always to have been substituted." I for one cannot see why for registering a few hundred dentists such a long period is necessary. I therefore ask again the Minister to tell the House how many dentists were still to be registered on the 29th March 1950 and in what stage the process is. That would

be useful for us to know how much time is necessary for the complete registration and why this extension of time by one year is necessary. If those figures are forthcoming, we will be able to judge what time would be needed to complete the work of registration. In the absence of that it would be very difficult to arrive at an idea of the time required for the registration.

Dr. Ambedkar: This is a matter of opinion. My friend Mr. Kamath with his abundant energy and administrative experience no doubt thinks that six months would be more than enough for completing the register. But, as I just now told the House, even a Government as efficient as the Government of Bombay asked for two years. I personally myself think that in view of the fact that the obligation of preparing the register rests upon the Provincial Governments, it is desirable that this House should follow what the Provincial Governments think is feasible in this matter. As a matter of fact we have curtailed the period to one year instead of the two years asked for by the Bombay Government. We have stuck to one year, which was the original proposal by the Government of Madras. I do not think it is possible for us with safety to curtail the period for us with safety to curtail the period provided in this Bill.

Shri Kamath : I take it that the Hon. Minister has no figures with him.

Dr. Ambedkar : No figures.

Mr. Speaker : If the registers are incomplete, how can he give the correct figures ?

Mr. Ambedkar : There is no register and who knows who is a dentist and who not.

The motion of Shri Kamath was negatived.

Shri Sidhva : I beg to move :

Renumber clause 3 as sub-clause (1) of clause 3 and add the following new sub-clause (2):

" (2) In sub-section *(1)* of section 49 of the said Act, after the words ' three years ' the words ' from the commencement of this Act or on the completion of formalities under section 32, whichever is earlier,' shall be inserted."

Dr. Ambedkar : As my friend Mr. Sidhva has said, this amendment affects an important principle which underlies the provisions of this clause, namely that the registers should be operative on the same date throughout India. This is not a mere matter of academic interest .....

Shri Sidhva : Is it laid down in the Act ?

Dr. Ambedkar : That is why we have said three or two years throughout. Otherwise we would have prescribed different dates for different States. It is necessary and desirable to preserve the principle of uniformity. The House will see that it affects eligibility for holding posts. It cannot be said that a person is

eligible for holding a post in a particular State and not eligible in another State, simply because the State has not been in a position to prepare the register. Therefore I think as it is desirable to preserve the principle I cannot accept the amendment of Mr. Sidhva. After all, the difference is only a matter of six months.

Shri Sidhva : I beg leave to withdraw my amendment.

The amendment; was, by leave, withdrawn.

Mr. Speaker : The question is :

" That clause 3 stand part of the Bill." The motion was adopted.

Clause 3 was added to the Bill.

(MR. DEPUTY SPEAKER IN THE CHAIR) Clause 4 (Amendment of the Schedule, Act XVI of 1948)

Shri Tyagi (Uttar Pradesh) : My amendment reads as follows :

In clause 4, for the proposed item (2A) of Part I of the Schedule to the Dentists Act, 1948, substitute :

" (2A) Any other institution imparting education or giving practical training in dentistry which the Central Government may, in consultation with the Central Council of Dentists, recognise for this purpose and on such conditions as the Government may deem fit to prescribe therefore."

I wish to confess that Dr. Ambedkar is a hard nut to crack. He has already said in his speech that the organisation mentioned in this sub-clause was defunct, whereas I was informed by a member of the council of Dentists that a Committee had been appointed to inquire into the conditions of this institution and that the Committee was already working on it. I don't want to make any aspersions on the institution. I don't know what its standard is, I have no personal knowledge of it, and that therefore I don't want to damage the reputation of the institution. But as an enquiry is going on. I think instead of committing the whole Parliament to recognising that institution, it is better that the Government had reserved the right in their own hands to decide.

Dr. Ambedkar : We are not affecting the institution in any way. We are dealing with the degrees granted by that institution in 1940—eight years ago.

Shri Tyagi : Dr. Ambedkar expects me to believe that the degrees of an institution may be recognised without the institution itself being recognised. What I am suggesting is that he may even recognise that institution. I want Government to have powers to recognise any institution . . .

Dr. Ambedkar : That power exists in section 10(2).

Shri Tyagi : Sir, I do not move my amendment.

Pandit Thakur Das Bhargava : I beg to move : ' In clause 4, in the proposed item (2A) of Part I of the Schedule to the Dentists Act, 1948, omit all the words occurring after ' March, 1940 '.

Therefore, as you have recognised all others as dentists on the basis of practise the principle of practise should also apply to these eight or ten men. Therefore, I would request that this amendment may be accepted.

Mr. **Deputy Speaker :** May I know the reason of the Hon. Minister to this amendment ?

Dr. Ambedkar : This clause is a clause which really gives effect to the suggestion made by the West Bengal Government. Personally I myself feel, however much sympathy I may have with my friend Mr. Bhargava, it involves the question of the assessment of the qualification of the dentist as distinguished from a person who makes a denture. I thought he was rather eloquent on the man who makes a denture. A person may make a denture without being a dentist. We are talking of a dentist, which is a very different profession.

Pandit Thakur Das Bhargava : But he has got a degree of L.D.Sc.

Dr. Ambedkar : The point is this. When the Act was passed, this institution was not deemed to be worthy of recognition. Subsequently there has been a considerable degree of agitation and the West Bengal Government decided to examine the position as to whether any of the persons qualified by tuition in this college were worthy of recognition. They came to the conclusion that before 1940 the standard observed by this institution was some thing which could be considered for the purpose of recognition. But there again they said that although there was a standard maintained it was also known that many boys merely attended and filled in certain terms without learning anything. Therefore, the two additional qualifications were introduced that he should not only have obtained his diploma before 1940 but in the course.

2

CODE OF CIVIL PROCEDURE (AMENDMENT) BILL

The Minister of Law (Dr. Ambedkar) : I beg to move:

" That the Bill further to amend the Code of Civil Procedure, 1908, be taken into consideration."

The object of this Bill is three-fold. The first one is to make the Civil Procedure Code applicable throughout India, except in certain areas which are specified in clause 2 of the Bill. As the House will remember, while the Civil Procedure Code extends to what are called Part A states, it does not extend to Part B States. Part B States have, each of them, their own Civil Procedure Code which is although more or less the same as the Civil Procedure Code which operates in Part A States yet it constitutes a separate jurisdiction. The result is that there is a great deal of difficulty in the service of summonses and in the execution of decrees passed by courts in Part A States within the areas covered by the courts of Part B States. Since India has become one under the provisions of our Constitution, it

is desirable from the point of view of establishing civil jurisdiction in the matter of suits and processes and execution of decrees that there should be one single Civil Procedure Code. That purpose is achieved by clause 2.

The second object of the Bill is that there were certain matters which were not covered by the existing Civil Procedure Code even as it operates in Part A States. For instance, there was no provision for the service of foreign summonses from foreign courts. Again, there was no provision for the execution of decrees passed by civil courts in places to which this Code did not apply. Similarly, the execution of decrees passed by revenue courts in places to which this Code did not apply was also a matter not covered. Similarly, the provision for the of being a student in that college he should have filled in certain terms. It is to make the qualification a real one, worthy of recognition, that these limitations were put in. I am personally prepared to place myself in the hands of the West Bengal Government who know the matter better, rather than substitute my own judgement, however great sympathy I may feel with the dentists themselves.

The Minister of Law (Dr. Ambedkar) : The wording of the article is that " the President may, for the purpose of removing any difficulties, particularly..... .etc. " " Particularly " does not mean that he has not got the general power.

Mr. Speaker: As I have understood the point of order of the hon. Member, apart from the words, " any difficulties " and " particularly ", he seems to construe article 392 as empowering the President to make adaptations only for purpose of transition from the provisions of Government of India Act to the provisions of the Constitution. That is substantially the point.

Dr. Ambedkar: That cannot be because it is a wrong construction. The point raised by my hon. Friend is that under article 392 the only power which the President possesses is confined to an adaptation of any section of the Government of India Act, 1935, so as to bring it in line with the provisions of the Constitution. My submission is that that is not correct, because the opening words in article 392 are quite general, namely, " The President may, for the purpose of removing any difficulties " and then " particularly etc. " comes in. Suppose you were to drop the words " particularly in relation to the transition from the provisions of the Government of India Act, 1935, to the provisions of this Constitution " the wording would be " The President may, for the purpose of removing any difficulties, by order direct.....etc.".

operation of commissions issued by foreign courts is also not provided for by our present Civil Procedure Code. In order to provide for these matters, there are introduced in this amending Bill clauses 6, 8, 9 and II which deal with them. They are by themselves so self-explanatory that I do not think that any observations of mine are necessary to make hon. members understand what is the purport of

these new clauses.

The most important clause, of course, is clause 12 and it is with regard to it that I propose to offer some remarks. As will be observed, clause 12 substitutes sections 83, 85, 86, 87 and 87B. These sections deal with suits by aliens, by or against foreign Rulers, Ambassadors and Envoys. Now, the only sections in which certain changes have been made are 86 and 87B. So far as section 86 is concerned, it is really the old section 86 with some minor changes. The one change that is proposed to be made in section 86 is in sub-clause (2) (d). It deals with the waiving of a privilege given to the foreign Rulers, namely, that they shall be sued only under certain conditions and subject to the satisfaction of certain procedural rules. The question that has been raised is whether any such person covered by the provisions of section 86 can waive this privilege or whether, notwithstanding the fact that he is prepared to waive such privilege, nonetheless the statutory provision should be gone through. Some courts in India have held that this being a statutory privilege of a procedural character, it is not open to the party to waive it and that a person who wants to sue should follow the particular procedure. Now, it does not seem very right or correct that a person who has been given a privilege should be debarred from taking the benefit of that privilege if he thinks that he does not need or does not want the benefit of that privilege. In order, therefore, to set this matter right, this provision has been introduced which expressly says that a person who has been granted this privilege may waive it if he so desires.

The second clause in section 86 which makes a change and to which I wish to draw the attention of the House is sub-clause (4) (b). We have added to the old categories of privileged persons one more category, namely, the category of a High Commissioner stationed in India. The position of a High Commissioner was up to now somewhat of an anomalous character. Is he an Ambassador? What is he? Whom does he represent? Does he carry the privileges as the representative of a foreign ruler does? In order, therefore, again to remove this ambiguity, it has been felt that it would be desirable to include the Ambassador in the category of privileged persons. There are, for instance, within our territory representatives of the Commonwealth who have been called High Commissioners and who from a diplomatic point of view occupy the same position as Ambassadors. Consequently, whatever may be the reason for making this distinction in their designation, factually, they do represent the heads of their Governments and it is, therefore, proper that they also should receive the same kind of consideration which an Ambassador does.

The other clause which makes a change in the old section 86, is clause 86, sub-clause (4), sub-clause (c). It says that the privilege granted to the heads of the foreign government, or to their Ambassadors and High Commissioners may

also be extended to such members of their retinue and their staff as may be notified by the Government of India by public notification. Here again, from the point of view of international law there does not seem to be any unanimity. One set of international lawyers have held that when you once grant immunity or a privilege to the Ambassador as the representative of a foreign State and you do it on the ground that his little colony is a little bit of his country established here, there is no ground, legally speaking, for making any distinction between the man himself and the agents through whom he operates in this country. There are other international lawyers who have said that such privileges need not be extended to everybody, but a state is free to pick and choose as to whom it shall grant these privileges. Now as this matter is not settled in terms of international law, it is felt that the best course would be for the law to give the power to the Central Government to notify whom it shall extend this privilege. It would be possible under this clause for the Foreign Department of the Government of India to make enquiries as to the practice prevalent in other countries and to make suitable notifications in order to be in conformity with the largest political international opinion in this country. This is all that we propose to do by way of changes in the old section 86 of the Civil Procedure Code.

Now, I come to section 87B in which I know most Members are deeply interested. Section 87 deals with the Rulers of the 12 NOON former Indian States. The question is whether they should also be given any privileges, such as the one they had under the existing Civil Procedure Code. Obviously, since they have ceased to be rulers in the political and legal sense of the term, they of course cannot claim any immunity from the operation of the law which is applicable to the rest of the citizens of this country. But the House will know that certain commitments have been made both by the Government of India and, if I may say so, also by the Constituent Assembly when the Constitution was before them, and it is necessary that we must recognise what we have already done. What is, therefore, proposed to be done by the new Section is to make section 85 and sub-sections (1) and (3) of Section 86 applicable to the Rulers of the former Indian States. If hon. members will refer to section 85 as put down in this amending Bill, they will find that it only says that when a foreign Ruler proposes to sue or if he is being sued, he may be permitted to appoint any particular individual, and the Government of India may permit him to do so, to conduct the litigation on his behalf either as a plaintiff or as a defendant. There is nothing wrong in extending this. The only privilege, so to say under section 85 that a ruler of a former Indian State gets is that he may not be required to attend personally when the suit is proceeding against him. He can defend by proxy.

With regard to 86 (1), it says that the consent of the Government of India may be necessary before any proceedings of a civil character are launched against a

Ruler of a former Indian State. This matter, again, I believe, was considerably debated yesterday when we were dealing with the Bill to amend the Criminal Procedure Code. The point was that in the present circumstances, there are grounds to believe that those persons residing in the Indian States may have many grounds or reasons for giving effect to their grudge, to their enmity, or personal hostility to a prince, and they may, without any *bona fide* reason drag him to a court and harass him. The object of requiring the consent of the Government of India is not that there shall be vested in the Government of India an absolute power to protect the prince from any kind of litigation in which the opponent may have a substantial ground for proceeding against him, but to see that the claim that is made against him is of a *bona fide* character. Beyond that there is no purpose in requiring this consent.

With regard to sub-clause (3) it gives him freedom from arrest and execution of decree against his property except with the consent of the central Government. As I said, these are merely, what I might say, fulfilment of certain undertakings that we have given in order to maintain the dignity of the Indian Rulers. Beyond that there is nothing.

I might also draw the attention of the House to the definition of the word "Ruler" which is given in section 87B (2) (b). I think that definition is important. It is not that every Ruler of a former Indian State will get the benefit of the provisions contained in section 87B. The definition is of a restricted sort, namely, that the Ruler must be recognized by the President as one entitled to these privileges. If a prince were to behave in such a manner that the President thinks that he ought not to be recognized, it would be perfectly possible for the President to delete his name from any notification, so that he would be reduced to the status of an ordinary citizen and be liable to the ordinary process to which every citizen will be liable in this country under the Civil Procedure Code.

The other clauses are just to clear any ambiguity, difficulty and so on. The most important clause is clause 12 and think I have given the House sufficient explanation as to the fundamental basis of the amendments which have been introduced by this Bill.

Mr. Speaker: Motion moved.

" That the Bill further to amend the Code of Civil Procedure, 1908, be taken into consideration."

Dr. Ambedkar: There is not much that calls for a reply.

But as certain points have been made I should like to make my position clear.

The first speaker who took part in this debate said that the provision contained in this Bill with regard to the immunity to be granted to the retinue of a diplomat was not in accord with international opinion. He felt that he was convinced that there was unanimity among the writers dealing with international law that not only

the diplomat should get the privilege but also his retinues. I am sorry to differ from him. I have before me several extracts from treatises dealing with international law and I do not wish to weary the House by reading them. I can assure the House that I do not find any such unanimity from the extracts before me. It is on that account that the section has been worded in the way in which it has been worded. My friend will also realise that whatever may be the method of defining the positions, the result will not be in any way different if the clause is allowed to stand as it is. Because whether the immunity is granted by the section itself or whether it is granted by a notification issued under the section, the result cannot be very different.

His second point was that we were not justified in using the word " Ruler ", because there are heads of States who are not called " Rulers ". I should like to draw his attention to the fact that in drafting this clause we have been following practically the same language which has been followed in the existing Civil Procedure Code. I would like to draw his attention to the heading of section 83 of the Civil Procedure Code, also to section 85, sub-clauses (1) and (2) and section 86, where the wording which we have used is also the wording used there. There is therefore no departure from the language that has been adopted in the existing Civil Procedure Code. But in this connection I would like to draw his attention to the definition that we have given of a "Ruler" which is contained in proposed section 87A of the Bill which says:

" Ruler " in relation to a foreign State, means the person who is for the time being recognised by the Central Government to be the head of that State."

Therefore, whether any particular State has a monarchical form of Government and the Ruler is a monarch or whether any particular State has a republican form of Government with a President or some other dignitary at the head of it, it really cannot make any difficulty at all in view of the fact that our definition leaves the matter to the Central Government to State who is to be regarded as the head of the State.

Coming to the position of the Indian Rulers, I have been asked to clarify one or two things. One is how long these privileges are going to last, and then, secondly, whether the privileges are personal privileges of the present, existing Rulers or whether they have any hereditary character which will pass on from father to son. My lawyer friends will realise that a lawyer never undertakes to solve a problem unless the problem is present to him, before him. No such problem is present before me and therefore I am not in a position nor willing to commit myself to any particular interpretation.

Mr. Deputy Speaker: It is there: Rulers for the time being.

Dr. Ambedkar: Yes, for the time being. Therefore, what I am saying is that this is a matter which is open to consideration, to revision, at all times. It is not a

matter which has been so to say taken out of the purview of Parliament or of Government. If Parliament so chooses, it can decide that these privileges and immunities shall end because enough time has intervened for us to suppose that these enemies of the Indian Princes have died out or disappeared without leaving any kind of progeny to harass them further, or they may take the view that these privileges may be permitted to last till the life time of the present holder. Therefore, the issue is quite open, not a closed one.

With regard to the assurances that have been demanded from me on behalf of Government as to how Government propose to utilise this power of granting or refusing consent, speaking for myself, I cannot have the slightest doubt in my mind that any Government or a Member of Government who may be dealing with this matter would ever think it advisable or proper to withhold consent in a matter where the claim is absolutely *bona fide.* I have no doubt in my mind at all because any Member who might be dealing with such a matter would be answerable to the House.

Pandit Kunzru (Uttar Pradesh) : Sir, it is past one o'clock now.

Mr. Deputy Speaker; If possible let us complete the first reading now.

Pandit Kunzru: The Hon. Minister might take half an hour.

Mr. **Deputy Speaker:** How long will the Hon. Minister take to finish?

Dr. Ambedkar? I will not take long, Sir.

My friend, Mr. Sarwate, in his anxiety to criticise Government for giving certain privileges to the former Rulers of Indian States said that he did not quite understand why sub-section (2) of section 86 was not made applicable to the Indian Princes, I am sure my friend, Mr. Sarwate, will realise that we have done the wisest thing in not applying it because if we had applied it Government would have been debarred from giving any consent to a suit against a Prince unless the four conditions mentioned in sub-section *(2)* had been satisfied. Clauses (a), (b), (c) and (d) embodied in sub-section *(2)* of section 86 are really rules of International law. There can be no dispute about them and we don't want to treat the Indian Princes on the same footing as ambassadors or heads of States or Rulers of other foreign States. The immunity that we have granted therefore, is of a very small dimension. If sub-section (2) had been made applicable the thing would have been worse.

I do not think, therefore, that any serious objection can be levelled against this Bill.

Mr. Deputy Speaker : The question is:

" That Bill further to amend the Code of Civil Procedure, 1908, be taken into consideration. ".

The motion was adopted.

Mr. Deputy Speaker: The House will stand adjourned till 2-35 p.m.

The House then adjourned for Lunch till Thirty Five Minutes Past Two of the Clock.

The House re-assembled after Lunch at Thirty Five Minutes Past Two of the Clock.

[MR. DEPUTY-SPEAKER *in the Chair]*

Clauses 2 and 3

Clauses 2 and 3 were added to the Bill.

Clauses 4 to II

Shri Raj Bahadur (Rajasthan) : I have an amendment to clause 4 but I would not like to move it formally. I only want to say one thing. Nowhere in the Constitution has the Central Government as such been empowered to constitute a court. The authority that is there in this behalf is exercised in the case of the Supreme Court by the President and in the case of the courts in the States by the Governor of the State. My objection pertains only to this point. I think that if we simply substitute the words "under the authority of the Constitution" for the words " Central Government" it would be much better.

Dr. Ambedkar: I Cannot accept the suggestion. The Constitution has established certain courts—the Supreme Court and the High Courts. As far the establishment of special courts, Parliament has been given the power and the Central Government can act under the authority given by Parliament. Therefore, it is inappropriate to use the words " the Constitution of India". Besides, " Central Government " has been used throughout in all the adaptation orders and I think it would be very unfortunate if a departure is made in the matter of terminology in this particular Bill.

Mr. Deputy Speaker: So, the hon. Member's point is answered. I shall put clauses 4 to11 together as there are no amendments to them.

The question is: " That clauses 4 to 11 stand part of the Bill. "

The motion was adopted.

Clauses 4 to 11 were added to the Bill.

Mr. Deputy Speaker: On a point of information, in regard to clause 9 may I know from the Hon. Minister what is the need for saying " execution of a decree of any revenue court in any State in any other State ". Could it not be " a revenue court in that State "? Why should it be augmented?

Dr. Ambedkar: The object of putting it in larger terms is to facilitate.

Dr. R. U. Singh: When the general discussion on the motion for consideration was on, I raised the same point and the Hon. Law Minister was pleased to say that the word ' Ruler ' is used in some of the sections of the Civil Procedure Code under discussion. I have looked through the various sections of the Civil

Procedure Code which are under discussion under clause 12 of the amending Bill, and I dare say that the word ' Ruler ' is not used anywhere else. As I said earlier, it is only the sub-title that uses the word " Foreign Rulers ". In the sections themselves the word 'Ruler' is not used. 'Ruling chiefs' may have been used because this term was in vogue in this country or some such term may have been used, but I dare say, Sir, the term 'Ruler' has not been used.

As the provisions of the Civil Procedure Code stand, it was not necessary to define the term Ruler. The point that was made by me was that it has been done unnecessarily and I reinforce that argument by saying that when we are dealing with questions of International Law, we might use terminology which is familiar to International Law. I observe that the term "Ruler" is not used. The words used generally are, "Head of a State " or " Sovereign ", " foreign State" or " Foreign Sovereign ". I do think that Government have taken pains unnecessarily to introduce the term " Ruler ". I do feel that if the word ' Head ' only is substituted now, because they have re-arranged the section and framed the thing in such a manner, some of the clauses will become clumsy. In some places ' Head of the State ' will have to be used, in some places ' Head ' only will do. Therefore, while sticking to my original point of view, I observe that it is unhappy that the term " Ruler " has been used. I think the clumsy phraseology used in the amending Bill may be allowed to stand. Or if that is not to stand, then, in some places, the word " Head " has to be used and in other, the term " Head of a Foreign State " has to be used, because the draftsmen have some-how rearranged the clauses in such a manner that there is no escape from this position.

Dr. Ambedkar: I am really at a loss to understand why my hon. friends are unhappy over the phraseology that has been used in this Bill. My hon. friend Mr. Raj Bahadur says that it is better to distinguish foreign Rulers from Indian Rulers by giving them a different name. Supposing that was true, would it not be necessary again to define " Head of a Sate ".

Shri Raj Bahadur : No, no.....

Dr. Ambedkar; In the United States of America, there is the President; in Great Britain, there is the King; in Switzerland, there is some other machinery to represent the State. If the facts are various, you will have to have a definition of " Head of State ".

Another hon. Member says that he has examined the provisions of the Civil Procedure Code to which I made reference in the morning. He thinks that the words that we have used in this amending Bill do not occur there. I hope he has got a copy of the Civil Procedure Code in front of him.

Dr. R. U. Singh: I have got it here.

Dr. Ambedkar: Please look up the heading of section 83.

Dr. R. U. Singh: That I stated earlier.

Dr. Ambedkar: The heading is, "Suits by Aliens and by or against Foreign Rulers and Rulers of Indian States." I would like to draw his attention also to the fact that this amendment was made in 1937 by the adaptation of Indian Laws Order. I cannot say that I am quite up-to-date in the matter of International Law and the phraseology that they use. But, I am quite content in saying that any one who made this Adaptation— and he will permit me to say that the adaptation was made by the India Office—must have been advised by some Parliamentary Lawyer, who could not have gone very much wrong in using the phraseology ' Foreign Rulers '.

Then, he says that the term ' Ruler of an Indian Sate ' has never been used in sections 83 onwards. I quite agree that a variety of designations have been used. The Indian Rulers have been called Princes, Rulers, Chiefs and so on. But, what I want to submit is this. When the Constitution by several articles has given them a particular description, namely. ' Rulers of Indian States ', is it permissible for the draftsmen to use a language other than the one that is used in the Constitution? The Justification for using the words " Rulers of Former Indian States " is simply that that is the language that is used in the Constitution. We do not want to have any departure from the language used in the Constitution so as to leave it open to anybody like my hon. friend Mr. Naziruddin Ahmed to come up and say, "well, this provision does not apply to the people to whom it is intended to apply. "

Mr. Speaker: The question is:

In clause 12 in the proviso to the proposed new section 84 of the Code of Civil Procedure, 1908, for " Ruler " substitute "Head",

The motion was negatived. Similar 3 other motions were negatived

Dr. R. U. Singh: ..... .So far as the immunity of the Rulers of the Indian States is concerned, we do not have any such assurance from the Law Minister, in regard to things done even in their personal capacity. We are concerned with that aspect of the question. It has not been said that a certain amount of notice would be sufficient or some such thing. The immunity now sought to be conferred on them is much greater than the immunity conferred on the Head of the Indian Republic, as also the Heads of the various States of the Union. And if Government would indicate their mind and their policy in this regard, as to the duration of the immunity and the extent of that immunity—1 dare say it ought not to be very wide—it would be extremely nice indeed.

Dr. Ambedkar: Before recess, I was also called upon to answer some of the questions which have been raised by my friend. I think I gave replies to those which I thought one could very safely give, and I do not know that I have anything further to add to what I have said. All that I would like to say now is this. My hon. friend if he will forgive my saying so, seems to lack sufficient imagination.

Shri R. U. **Singh:** All lawyers do not have much of it.

Dr. Ambedkar: Lawyers sometimes have very long imagination. If he had sufficient imagination he should have realised the fact that the Constituent Assembly very definitely and very rightly said that whatever was included in the covenant made before a certain date, matters contained in it were not justiciable. Now, I think that was a very great protection and a very important fact. It means that Parliament or Government is free to make any change it likes, notwithstanding the fact that the matters were mentioned in the convenient. That being so, I think the House at any rate, should feel satisfied that the future is in no way closed or dark. I do not think that anybody would expect me to say anything more than that.

Mr. Speaker: The question is : In clause 12, omit the proposed new section 87B. The motion was negatived.

Mr. Speaker: The question is : " That clause 12 stand part of the Bill. "

The motion was adopted. Clause 12 was added to the Bill. Clauses 13 to 18 were added to the Bill.

Clause 19.—*(Special Provisions etc.)*

Amendment made: In Clause 19, *omit "* Code of" occurring in line 2.

—[Dr. Ambedkar] Clause 19, as amended, was added to the Bill.

Clause 20 was added to the Bill. **Clause 1.—***(Short title etc.)*

Amendment made: In Sub-clause (1) of clause I, for " 1950 ", substitute " 1951".

—[Dr. Ambedkar] Clause I, as amended, was added to the Bill. The Title and the Enacting Formula were added to the Bill.

Dr. Ambedkar: I beg to move: " That the Bill, as amended, be passed."

Mr. Speaker: The question is : " That the Bill, as amended, be passed ".

The motion was adopted.

3

PART B STATES (LAWS) BILL

The Minister of Law (Dr. Ambedkar) : Sir, I move for leave to introduce s Bill to provide for the extension of certain laws to Part B States.

Mr. Speaker: The question is : " That leave be granted to introduce a Bill to provide for the extension

of certain laws to Part B States. "

The motion was adopted.

Dr. Ambedkar: Sir, I introduce the Bill.

PART B STATES (LAWS) BILL

The Minister of Law (Dr. Ambedkar) : I beg to move : " That the Bill to provide for the extension of certain laws to Part B States, be taken into consideration. "

The Bill is a very simple one...

An Hon. Member: As all other Bills are.

Dr. Ambedkar: Much simpler than the others. The object of the Bill is this. There are certain Acts passed by the Central Legislature which on account of the jurisdiction formerly exercised by the Central Government were confined in their operation to Part A States only. Part B States (formerly called the Indian States) which were sovereign and independent, had their own laws which might be compared to the laws passed by the Central Legislature under Lists I and III. Now this Parliament has obtained jurisdiction over the territories covered by Part B States so far as Lists I and III are concerned. There are already in existence a large number of Acts passed by the Central Legislature covering the field of Lists I and III, which on account of their territorial limitation did not apply to Part B States. It is for this purpose that this Bill has been brought forward.

Hon. Members will see that to this Bill is added a Schedule giving the list of Acts which it is proposed under the powers given by this Bill to be extended to Part B States. There are altogether 135 Acts, so far as I have computed them, which are sought to be extended to Part B States.

While seeking to extend the Central Acts to Part B States it is felt that these Acts themselves required some small amendment according to the views of the various administrative departments of the Government of India which are working these Acts. Consequently the occasion which now exists for the purpose of extending these 135 Acts is also utilised for the purpose of making certain amendments in these Central Acts, so that when this Bill is passed, not only these Acts will come into operation in Part B States but they will also come into operation in the form in which they are modified by the provisions contained in the various Acts in the Schedule as mentioned therein. I do not think any controversy is likely to arise over the principle of this Bill.

There are one or two omissions which we have discovered since and I propose to move amendments in order to bring them under this Schedule.

***Mr.* Speaker:** Motion moved:

" That the Bill to provide for the extension of certain laws to Part B States, be taken into consideration. "

Dr. Ambedkar; With regard to the point made by my friend from Travancore-Cochin, Shri Sivan Pillay the position is quite easy as I see it. There are some laws which are sought to be extended by this Bill which fall in the Concurrent List. Consequently, it would be open to any State in India to amend these laws in the manner that they wish to do. To take his illustration, namely, the Indian Penal

Code, it is quite true that the Indian Penal Code sanctions death as one of the penalties. It is equally true, as he has said, that the Penal Code as it now operates in Travancore abolishes that penalty. Well, after the Indian Penal code has been made applicable under this Act, it would be perfectly possible for the Travancore-Cochin Legislature to pass an amending Bill and amend the Indian Penal Code in the way they wish to do. Consequently, so far as the laws which fall under the Concurrent List are concerned, all States in India which have the power to make laws will certainly make laws to suit their circumstances.

With regard to the point made by my other hon. friend, it seems to me that he has not read correctly the provisions of clause 3 of this Bill which says :

" The Acts and Ordinances specified in the Schedule shall be amended in the manner and to the extent therein specified ".

Therefore, this Bill is both a Bill to amend and also to extend. Of course, he might stay that this is a very inelegant method of legislation, but let him consider his plan of doing the thing. We will have to stay here and pass 135 different laws, first to amend and then to extend. I think it is desirable, although it may not be quite so straight or elegant, to adopt the summary procedure that has been adopted in this Bill, namely, both to amend and to extend. I do not think my hon. friend will have any quarrel after this explanation.

Mr. Speaker: The question is :

" That the Bill to provide for the extension of certain laws to Part B States, be taken into consideration. "

The motion was adopted.

Clauses 2 to 6. Clauses 2 to 6 were added to the Bill. **Clause** 7.—*(Power to remove difficulties)*

Amendment made:

In sub-clause (2) of clause 7, after part (b) insert: " (c) specify the areas or circumstances in which, or the extent to which or the conditions subject to which, anything done or any action taken (including any of the matters specified in the second proviso to section 6) under any law repealed by that section shall be recognised or given effect to under the corresponding provision of the Act or Ordinance as now extended. " —*[Dr. Ambedkar]*

Clause 7, as amended, was added to the Bill.

The Schedule

Dr. Ambedkar: I was wondering whether all the amendments to the Schedule standing in my name may be taken as moved.

Mr. Speaker: Is the House agreeable to this course?

Hon. Members: Yes, Sir.

Shri Shiv Charan Lal: I would like to have clarification on one point before you

put these amendments to vote. On page 4 of the schedule, under the Government Savings Banks Act, 1873, it is said that that Act would not apply to any deposits made in the Anchal Savings Bank of the State of Travancore-Cochin. It is not clear to us why it won't apply to this Bank.

Dr. Ambedkar: I am afraid it would be very difficult for me to reply to the various queries. I should therefore like to explain my position. This Bill is like a supplementary estimate which the Finance Minister puts before the House, although the actual responsibility of defending the different estimates falls upon the different Ministers who are responsible for them. I am merely sponsoring what the other Departments desire should be done. I am sorry that the Finance Minister is not here, otherwise, he might have explained to my friend exactly why he wants this particular amendment to be made. All the same, I hope that my friend will agree that this must have been done after very deliberate and mature consideration.

Mr. Speaker: I do not wish to raise any objection, if the House has none, but this is not a satisfactory procedure. An hon. Member is entitled to know before he votes what he is called upon to vote and why. Even if the position be like the supplementary estimate, it should be the practice to append some kind of notes for the benefit of hon. Members explaining the reasons why they are called upon to vote for a certain proposition.

Dr. Ambedkar: It is a very valuable suggestion. We shall try and follow it up.

Mr. Speaker; What is the present position of Shri Shiv Charan Lal ? Is he agreeable to vote for it without knowing the reasons?

Dr. Ambedkar; We shall insure any risk, if he is undergoing one.

Mr. Speaker: It does not mean that he doubts the correctness or the soundness of the proposition, but still as a Member he is entitled to know the reason.

Shri S. V. Naik (Hyderabad): On page 5 of the list of amendments to the Schedule, under the heading "Currency Ordinance, 1940" after section 2, certain temporary provisions with respect to Hyderabad one-rupee notes are made. I would like to know what will be the position in regard to the other currencies that are prevalent in the Hyderabad State.

Dr. Ambedkar: I shall have to answer in the same way that I have done before. I can inform the Hon. the Finance Minister and he will probably communicate to the hon. Member what is the answer. 4 P.M.

I have one more amendment to the schedule. I request that that may also be taken as moved.

Amendments made:

1. In the schedule, under the heading " The Indian Oaths Act, 1873 ", for the item relating to section I, substitute:

" Section 1.—" except Part B states " substitute " except the States of Manipur and Jammu and Kashmir ".

2. In the Schedule, after entry relating to " The Partition Act, 1893 ", insert:

" The Livestock Importation Act 1898 (IX of 1898) *Section 1.*—For sub-section (2) substitute :

(2) It extends to all Part A States, Part C States and the States of Saurashtra and Travancore-Cochin'."

3. In the Schedule, under the heading " The Indian Coinage Act, 1906 ", for the last item substitute: "After section 23, insert the following, namely:

' 24. temporary provisions with respect to certain Part B States Coins.—Notwithstanding anything in section 6 of the Part B States (Laws) Act, 1951, coins of such description as at the commencement of the said Act were in circulation as legal tender in any Part B State shall continue to be legal tender in that State to the like extent and subject to the same conditions as immediately before the commencement of the said Act for such period, not exceeding two years from such commencement, as the Central Government may, by notification in the *Official Gazette,* determine.' "

4. In the Schedule, under the heading "The Indian Companies Act, 1913", after the item relating to the new section 2B, insert: " Section 144.—After sub-section (1) insert:

(2) Notwithstanding anything contained in sub-section (1) but subject to the provisions of rules made under sub-section *(2A),* the holder of a certificate granted under a law in force in the whole or any portion of a Part B State immediately before the commencement of the Part B States (Laws) Act, 1951, entitling him to act as an auditor of companies in that State or any portion thereof shall be entitled to be appointed to act as an auditor of companies registered anywhere in that State.

(2A) The Central Government may, by notification in the *Official Gazette,* make rules providing for the grant, renewal, suspension or cancellation of auditors' certificates to persons in Part B States for the purposes of sub-section (2), and prescribing conditions and restrictions for such grant renewal, suspension or cancellation'."

5. In the Schedule, after the entry relating to the " Indian Copyright Act, 1914 ", insert :

" *The Cinematograph Act, 1918 (II of 1918) Section 1.*—In sub-section (2), omit " Hyderabad and '."

6. In the Schedule, after the entry relating to "The Indian Bar Councils Act, 1926 ". insert: " The Child Marriage Restraint Act, 1929 (XIX of 1929).

Section 1.—In sub-section (2), for 'except Part B States' substitute 'except the State of Jammu and Kashmir'."

7. In the Schedule, under the heading " The Petroleum Act, 1934 ", in the item relating to section 1 for " For " substitute " In sub-section (2), for".

8. In the Schedule, after the entry relating to "The employment of Children Act, 1938", insert: " *The Motor Vehicles Act, 1939 (IV of 1939)."*

Throughout the Act, unless otherwise expressly provided, for the States' substitute 'India'.

Section I— (a) In sub-section (2), for 'except Part B States' substitute 'except the State of Jammu and Kashmir';

(b) for sub-section (3), substitute:—

'(3) Chapter VIII shall not have effect in any Part B State to which this Act extends until the Central Government, by notification in the *Official Gazette,* so directs, and notwithstanding the repeal by section 6 of the Part B States (Laws) Act, 1951, of any law in force in that State corresponding to the Motor Vehicles Act, 1939, the corresponding law, in so far as it requires or relates to the insurance of motor vehicles against third party risks shall, until Chapter VIII takes effect in that State, have effect as if enacted in this Act.'

Section 2.—(a) after clause 9 insert *(9A) India' means the territories to which this Act extends' : (b) omit clause (29A).

Section 9.—(a) In sub-section (2), for 'In any Part B State', substitute *in the State ofJammu and Kashmir';

(b) In sub-section (4),—

(i) for 'any Part B state or' substitute 'the State of Jammu and Kashmit or any', and

(ii) for 'in any State' and 'in any such State' substitute 'in the State'.

Section 28.—(a) In sub-section (2), for 'any part B State' substitute 'the State of Jammu and Kashmir';

(b) in sub-section *(5),*—

(i) for 'any Part B State or' substitute ' the State of Jammu and Kashmir or any ';

(ii) for 'registration in such State' and 'registration in any State' substitute 'registration in the State '; and

(iii) for ' issued in any such State ' substitute 'issued in the State'. *Section 42.*— In sub-section (3),—

(i) in clause (a), for 'the Government of a Part A State' substitute 'a State Government';

(ii) in clause (h), for ' any Part B State or ' substitute ' the State of Jammu and Kashmir or any.'

Section 133.—For' the Legislature of a Part A State ' substitute ' the State Legislature'.

The Sixth Schedule.—For the table, substitute the following:—

Assam	AS
Bihar	BR
Bombay	BM, BY
Madhya Pradesh	CP, MP
Madras	MD, MS
orissa	OR
punjab	PN
Uttar Pradesh	UP, US
West Bengal	WB, WG
Hyderabad	HT, HY
Madhya Bharat	MB
Mysore	MY
Patiala and East Punjab States Union	PU
Rajasthan	RJ
Saurashtra	SS
Travancore- Cochin	TC
Ajmer	AJ
Bhopal	BS
Bilaspur	BL
Coorg	CG
Delhi	DL
Himachal Pradesh	HI
Kutch	KH
Manipur	MN
Tripura	TR
Vindhya Pradesh	VP
Andaman and Nicobar Islands	AN

9. In the Schedule, under the heading " the Protective Duties Act, 1946 ", omit the last item relating to section 2.

10. In the Schedule, omit the entry relating to the Employees' State Insurance Act, 1948, (XXXIV of 1948).

II. In the Schedule, omit the entry relating to "The Transfer of Detained Persons Act, 1949 (XLV of 1949) ".

12. In the Schedule, under the heading " The Currency Ordinance, 1940 ", after the item relating to section 2, insert:

" After section 2, insert the following, namely:—

" 2A. *Temporary provisions with respect to Hyderabad one-rupee notes.*—Notwithstanding anything contained in section 6 of the Part B States (Laws) Act, 1951, notes of the denominational value of one rupee which at the commencement of the said Act were in circulation as legal tender in the state of Hyderabad shall continue to be legal tender in that state to the like extent and subject to the same conditions as, immediately before the commencement of the said Act and for such period, not exceeding two years, from such commencement, as the Central Government may, by notification in the *Official Gazette,* determine'."

13. In the Schedule, insert the following as the first entry: " The caste Disabilities Removal Act, 1850 (XXI of 1850)

Long title and preamble.—For ' the territories subject to the Government of the East India Company ' substitute ' India '.

Section 1.—(1) For ' the territories subject to the Government of the East India Company ' substitute ' India ' and for 'in the courts of the East India Company and in the courts established by Royal Charter within the said territories' substitute 'in any court '.

After section I, add the following section, namely:—

2. *Short title: and extent.*—(1) This Act may be called the Caste Disabilities Removal Act, 1850.

(2) It extends to the whole of India, except' the State of Jammu and Kashmir *'. "*

—[Dr. Ambedkar]

The Schedule, as amended, was added to the Bill.

Clause 1.—*(Short title etc.)*

Amendment made:

In sub-clause (1) of clause I and elsewhere in the Bill where there is a reference to the Part B States (Laws) Act, 1950, for" 1950 "substitute " 1951 ".

—[Dr. Ambedkar]

Clause I, as amended, was added to the Bill. The Title and the Enacting Formula were added to the Bill.

Dr. Ambedkar : I beg to move : " That the Bill, as amended, be passed. "

Mr. Speaker: Motion moved : " That the Bill, as amended, be passed. "

Capt. A. P. Singh (Vindhya Pradesh) : Sir, I would like to draw your attention to one point. The statement of Objects and Reasons lays down that " for the purpose of improving the administration ", and as such I oppose it; although this is not a part of it and so no amendment could be put forth in this connection.

Mr. Speaker: Order, order. The hon. Member is too late. I may inform him, however, that a protest on this same point was raised by another Member of this House previously.

Dr. Ambedkar: I would like to apologise, Sir.

Mr. Speaker: The question is : "That the bill, as amended, be passed."

The motion was adopted.

PREVENTIVE DETENTION (AMENDMENT) BILL

The Minister of Home Affairs (Shri Rajgopalachari) : ..... I was coming here in a hurry for I heard that Dr. Ambedkar was able to get through two solid Bills in this House as I had not at all anticipated last evening. It seems to me that people treat me much worse than they treat Dr. Ambedkar.

The Minister of Law (Dr. Ambedkar) : I am a Harijan; you are not.

LAYING OF ADAPTATION ORDER ON THE TABLE

Mr. Deputy Speaker: Dr. Ambedkar.

The Minister of Law (Dr. Ambedkar): Mr. Deputy Speaker, Sir.....

Shri Syamnandan Sahaya (Bihar): Sir, before the Law Minister begins, may I make a submission? Now we have got an idea of the work to be done by Parliament up to the 16th. But we do not yet know what Bills or other legislative measures or other work will be taken up on the 17th of this month and ...

Shri Sidhva (Madhya Pradesh) : There is the agenda up to the 19th.

Shri Syamnandan Sahaya: But it only says whether the business will be official or non-official.

Shri Sidhva: No, they are all official Bills. We got it today.

Dr.Ambedkar: Mr. Deputy-Speaker, yesterday, my hon. friend Mr. Hussain Imam raised a question with regard to an answer which I gave to a question put by Pandit Bhargava with regard to the Adaptation Order issued by the President. Unfortunately I was not present in the House. I wish he had given me previous notice that he was going to raise this matter; I certainly would have been present in the House to give him the answer. From the proceedings, extracts from which were supplied to me yesterday evening. I find that he raised two questions. One question which he raised was that he was not able to obtain a copy of the Adaptation Order although he made an effort to get one. On that point, the facts which I have been able to ascertain are these. The Adaptation Order was published in the Gazette Extraordinary dated the 4th instant. I gave my reply on the 7th. Copies of the Adaptation Order, or rather, of the Gazette, were received in the Constitution Branch on the 10th, the date on which he sent a telephonic message to the Constitution Branch, enquiring as to what had happened to the copies of the Adaptation Order. My information is that the Superintendent whom he contacted on that matter told him that the copies of the Gazette Extraordinary had just reached him and that he was examining whether there were any clerical or printers' errors. I am told that my hon. friend did not specifically ask for a copy. I do not know, he is in a better position to confirm this or not.

Shri Hussain Imam (Bihar) : I asked for it in the Notice Office and in the Library.

Dr. Ambedkar: I am telling what happened in the Superintendent's branch. That being so, the hon. Member was not directly supplied any copies from the Constitution Branch. It is obvious that if the copies were received by the Superintendent on the 10th it was not possible for him to supply copies to the Notice Office for distribution among Members of Parliament. That is the position so far as the first complaint is concerned.

I find from the proceedings, extracts of which were sent to me, that the hon. Member also raised a question of privilege.

What I understood him to say was that as soon as an Adaptation Order is made by the President, it ought to be placed on the Table of the House. Now, Sir so far as that point is concerned, my submission is this. Whatever privileges this House

has, they are regulated by article 105 of the Constitution which says that the Parliament shall have all the privileges which the House of Commons has. That takes us to an enquiry as to whether, when laying a paper on the Table of the Parliament is a matter of privilege and when it is not a matter of privilege. Referring to May one thing is quite clear ....

Mr. Deputy Speaker; I am sorry to interrupt the Hon. Minister. So far as the question of privilege is concerned first of all the Speaker looks into the matter, goes through the rules and regulations and then ascertains the opinion of the House. If he comes to the conclusion that a matter of privilege is involved, he then sends it to the Privileges Committee. I do not think the hon. Member seriously raised a question of privilege. The question was that a copy of the Adaptation Order ought to be made available. He went to the Notice Office and also to the Library. He said that the Adaptation Order was made as early as the 4th April and therefore normally expected it to be placed in the Library in a day or two. Now that the matter has been made clear by the Law Minister we need not go further into the question of privilege.

Dr. Ambedkar : If that is your ruling I would not pursue the matter. But I only wanted to submit one point which I think is of general interest and which the House should know. A matter of privilege can arise only when a statute makes it obligatory upon the government that a paper should be laid on the table of the House. Now so far as the Adaptation Order is concerned there is no such obligation at all. I would like hon. members to compare article 372, which deals with Adaptation, with article 392 which deals with an order made by the President for the removal of difficulties in the Constitution during the transition period. It will be found that so far as article 392 is concerned there is a specific sub-clause which says that any order made by the President for the removal of difficulties shall be placed on the table of the House. There is no such proviso with regard to article 372. Therefore my submission was that there is really no privilege involved and the question of breach of privilege therefore cannot arise.

Pandit Maitra (West Bengal) : Sir, are you going to allow a general discussion as to whether or not this is a question of privilege . . ..

Shri Bharati (Madras) : The Chair has already ruled that there was no question of privilege.

Mr. Deputy Speaker: I am not deciding the question of privilege at all. In as much as there was a reference by Mr. Husain Imam to the word privilege, the Hon. Law Minister thought that he must answer that other point also. He has now placed his view point. That question does not arise now and therefore I will not go into it.

[MR. DEPUTY-SPEAKER *in the Chair.]*

Mr. Deputy Speaker: The hon. Member may resume after we hear the Hon. the Law Minister.

Dr. Ambedkar: Sir, I have applied my mind to the points which you were good enough to put to me and I would like to submit my opinion about those points.

The real question that the House has to consider is whether this Bill offends against Article 117—either clause (1) of that article, or clause (3) of that article. Those are the main points that are to be considered and the clauses which require to be considered in the light of Article 117 are clauses (4), (5) and (6) of the Bill.

I should take clauses (5) and (6) together. Now it is contended that those clauses offend against clause (1) of Article 117. The validity of that contention must depend upon the meaning that is to be attached to the word " appropriation " occurring in sub-clause (d) of clause (1) of Article 110 which defines what is a " Money Bill ". Now, I am quite certain in my mind that the word " appropriation " which is used in sub-clause (d)—and I have verified myself by reference to May's " Parliamentary Practice " where this matter has been discussed at great length—is a term of art and it involves two things: first the naming of the service, the particular service, and secondly the exact allotment of money to be spent on that particular service. It is these two things that go to make what we know now as appropriation and it is in that sense that the word is used both in Article 114 and Article 266 of the Constitution.

Reading the two clauses 5 and 6 in the Bill I do not think it is possible to import into those two clauses any such thing as we now understand by the term " appropriation ". They are, in my judgement, mere directions to the Government that this is a service on which money may be spent which Government may or may not spend. Therefore, so far as Article 117, clause (1) is concerned, the Bill, it may be said, sails clear and no difficulty can arise on that account.

Now, I turn to clause 4 of the Bill. There, we have to consider whether that clause offends against clause (3) of Article 117. My conclusion is that it does, because clause 4 of the Bill imposes a liability upon the Government to undertake a service which, if the Bill is passed by this House, would undoubtedly involve expenditure out of the Consolidated Fund. Therefore, it would require a recommendation from the President under the provisions of clause (3) of Article 117.

The question that remains for consideration is this. At what stage must the recommendation of the President be forthcoming? The word used there is " consideration ". It has been contended that " consideration " means the very initiation of the Bill. I am afraid I cannot agree with that contention. A bill has two stages: the first stage is called in our parlance " Introduction ", which is different from ' consideration '. After a Bill is introduced, then the stage of consideration

begins and the stage of consideration continues from that point when the Bill is taken up by the House after the stage of introduction, until it is passed. During that interval the proceedings are proceedings in respect of consideration of the Bill. Therefore, in my humble opinion, if before the motion for passing is put, a recommendation is obtained, that would meet the requirements of clause (3) of Article 117. But while that is so, I think there is one practical point which must be considered. The House must not readily assume that the President will give his assent or recommendation whenever it is asked. If a financial liability is involved, the President will have to consider the matter in detail and find out whether the financial condition of the country is such as he could agree to take more financial liability. It is possible that the President may refuse his recommendation, in which case the labour spent by the House would be wasted. I think, therefore, there is no harm in adopting or suggesting the rule that whenever there is any bill projected before the house which involves or is likely to involve expenditure from the Consolidated Fund, the House should insist that immediately, before the consideration stage begins, the Member in-charge should produce a recommendation from the President so that the House may be engaged in labours which may ultimately not turn out to be fruitless.

Mr. Deputy Speaker: We have heard this point *in extenso.* I entirely agree with the Hon. the Law Minister in coming to the conclusion that 'appropriation' as used in Article 110, Sub-clause (1) (d) is only a term of art and it applies only to cases which are referred to in Article 114. Therefore the provisions do not militate against the provisions of Article 117 (1). Of course, it involves expenditure from the Consolidated Fund and therefore comes within the purview of sub-clause (3) of Article 117.

Mr. **Chairman:** So far as the word " mechanical " goes it appears the defect must be something relating to the machine. So far as the word " construction " used by Mr. Sidhva goes, it does not look quite opposite. The word "structural" better explains the meaning. At the same time, if both the words are taken away the wording will be merely " defective " which perhaps will be more vague than now. So far as the powers given in clause 19 are concerned, the wording is, " prescribe the power, duties and functions of the registering authority and the local limits of their jurisdiction. " If a rule can be made that it will be the duty of the registering authority to look into the structure of the ship also, then I think this lacuna may be covered. But I leave that to the House to decide. If the hon. Minister wants to change the wording. I will certainly permit an amendment at this stage.

Shri S. C. Samanta (West Bengal) : May I suggest that we say, " mechanically or otherwise defective "?

Shri Santhanam: You are making it more vague.

Pandit Munishwar Datt Upadhyay (Uttar pradesh) : If the word " mechanical " is dropped and only " defective " remains, then all sorts of defects can be covered by the rules.

The Minister of Law (Dr. Ambedkar) : May I say a word as it strikes me? I have not seen the Bill and therefore I am speaking from such impression as I have formed. The main object of the Bill is to secure safety. Now, safety depends, so far as I understand it, upon the mechanical structure of the ship and not upon structure in the sense of its shape or size. Therefore a distinction, I think requires to be made between the two, the structural defect which has nothing to do with the ship, and the mechanical defect which has something, in fact greatly, to do with the safety of the ship. The object of the Bill is to secure safety and therefore emphasis must necessarily be laid upon the mechanical side of the ship and not so much upon the structural side. A man may have, for instance, an oblong ship; a ship may be something whose bottom may be very different from the others.

Shri Sidhva: That is a defect.

Dr. Ambedkar: What I want to know is, what is a structural defect? One man may say, " From my point of view it is a structural defect. It ought to have been in some other shape." Another man may say, " It ought to be of some other shape." The submission I am going to make is this, that the Bill aims at securing the safety of the passengers; the safety of the passengers essentially, mainly, fundamentally depends upon the mechanism of the ship, and therefore what is necessary in the matter of giving a certificate by the surveyor is that he should see whether there is any mechanical defect. That is my submission.

Shri Venkataraman: May I ask the Law Minister .....

Dr. Ambedkar: This is no question of law. I am only speaking as one of the Members of the House.

Shri Hussain Imam: Sometimes structural defects may endanger the safety of passengers. For instance, the railings on the deck may be so low that passengers may fall into the water. Again, if the blades are not properly screened passengers may fall on them and get crushed. Similarly, if the engine room is not properly protected you may have accidents. The word " structural " does not imply any defect in size and shape but should be included for the same purpose on which the Law Minister insists, namely, that it is the safety of passengers that we look to. We must trust our authority to so interpret the statute as not to make it inoperative. I consider "structural" is very essential.

Shri Sidhva: My friend Mr. Santhanam said that though my wording did cover the intention still there is vagueness in it, and my Hon. friend Dr. Ambedkar has stated that what we aim at is the safety of passengers. I am also for safety, but

he has mixed up shape with safety. My hon. friend. Mr. Hussain Imam has come out with the correct instances. I can tell Mr. Santhanam that some of these shipowners deliberately put the railings very low and as a result many accidents have occurred.

An hon. Member: Why put it " deliberately " low?

Shri Sidhva: Because it cuts down the costs. The deck Passengers Committee has made structures on this practice. There are many other structural points, for instance, use of bad wood in construction. Those who have experience in this field have spoken in favour of my suggestion. Unfortunately, my friend Dr. Ambedkar.....

Dr. Ambedkar: I have travelled very much.....

4

SUPREME COURT ADVOCATES (PRACTICE IN HIGH COURTS) BILL

The Minister of Law (Dr. Ambedkar) : I beg to move :

" That the Bill to authorise advocates of the Supreme Court to practise as of right in any High Court, be taken into consideration. "

The Bill is a very simple Bill. The House will realise that we have now in India two different courts—the High Courts and the Supreme Court. The High Courts and the Supreme Court have independent jurisdictions in the matter of enrolling persons who as of right may practise before them. The High courts have their own rules for enrolment—of persons appearing in their courts. The Supreme Court has recently made its rules which are published in the Gazette according to which it is said that a person shall not be entitled to be enrolled as an advocate unless he possesses:

(1) (a) a degree in law of an Indian University, or (b) is a member of the English Bar,

(2) has been for not less than ten years in the case of a senior advocate or seven years in the case of any other advocate, enrolled as an advocate in a High Court or a Judicial Commissioner's court in the territory of India..

We have, therefore, to-day two different sets of lawyers—one who are enrolled on the roll of the Supreme Court and another set who are enrolled on the roll of the High Courts. But the difficulty is this that those who are enrolled on the roll of the Supreme Court are not entitled to practise in the High Courts unless they are also enrolled on the various High Courts. It is felt that this causes a great deal of difficulty for clients. Let me illustrate the difficulty by a simple example. There is an appeal which comes, say for instance, from the Madras High Court to the Supreme Court. The client instead of employing a Madras advocate wishes to employ an advocate from U.P. which he is perfectly entitled to do provided of course that the U. P. counsel is enrolled in the Supreme Court. It may however,

happen that the matter is not finally disposed of by the Supreme Court and the Supreme Court sends the case back to the original High Court from which it came up, for further evidence, or for the trial of some issues or for taking evidence or something like that. Now, the U. P. lawyer, who was originally engaged in the Supreme Court in the matter which came from Madras, while he can appear in the Supreme Court and conduct the case, argue the case and so on, he cannot be engaged when the case is remitted back to the High Court of Madras, as he is not an advocate of Madras, he is an advocate of U. P. Now this difficulty, it is felt, must be resolved, because it is in the interest of justice not merely in the interest of the client that a lawyer who has spent a large part of his time and energy, in studying the case and understanding it should also be in a position to deal with it when it is remitted back to the original court.

Well, this difficulty could be solved in two different ways. One way to solve it would be to say that any particular lawyer who has been engaged in a particular case, when that case goes back, that particular lawyer would be entitled to appear in that case. The other is to have a general rule saying that all lawyers and advocates who have been enrolled by the Supreme court shall as of right be entitled to practise in any court. The original idea on which we were proceeding was the limited one. But subsequently on further consideration it was felt that it would be desirable to have a general rule permitting all advocates who are enrolled in the Supreme Court as of right to practise before any High Court, without any further procedure to be undergone. That is what this bill proposes to do. This as I said, is the general principle which the Bill embodies. To this principle, the Bill attaches two exceptions. One exception is this. A lawyer who is enrolled in the Supreme Court shall not automatically be entitled to practise in a High Court on the original side. He may practice on the appellate side without any further enrolment but not on the original side. The second exception proposed to be made is with regard to a lawyer who was an ex-judge and has been enrolled, because before the Constitution came into existence there was no rule prohibiting judges, after retirement, from practice. They were free to practise and there are many cases where judges have been enrolled in the Supreme Court and are allowed to practise, but there are cases where persons, who, before the Constitution, were appointed to the High Courts and were required to give an undertaking that they would not practice in that particular High Court. Our exception says that if there is any advocate of the Supreme Court, who was an ex-judge of a High court and had given an undertaking not to practise in a particular High Court (which must be the High Court of his own province) then he shall not practise notwithstanding the provision contained in this Bill. These are the simple provisions of the Bill.

Shri C. Subramaniam (Madras) : What is the reason for the first exception?

Dr. Ambedkar: The reason is this. Under the Bar Councils Act a special provision exists. I believe there are only now three courts which have got original jurisdiction. All other High Courts are only appellate High Courts and they have no original jurisdiction but they have been invested with special powers to make rules for the enrolment of persons on the original side. As it is not proposed to amend the Bar Councils Act, it is felt desirable to keep that provision intact. That cannot cause much difficulty, because after all when the matter is remitted back by the Supreme Court to the High Court it will in all probability and in most cases be dealt with by the appellate side of the High Court.

Shri S. N. Sinha (Bihar) : Some of the High Courts have got original jurisdiction in cases like probate and company law. Even in these cases are you going to prohibit?

Dr. Ambedkar; Leave something for the local lawyers.

Mr. Chairman: Motion moved

" That the Bill to authorise advocates of the Supreme Court to practise as of right in any High Court, be taken into consideration. "

Shri Venkataraman (Madras): This Bill in so far as it tries to unify the bar of this country is most welcome. Not only after the establishment of the Supreme Court but even earlier, immediately after the establishment of the Federal Court, the lawyers' conference held in Madras year after year suggested by passing resolutions that the Bar in India should be unified and there should be an All-India Bar Council and the enrolment of and disciplinary jurisdiction over all these Lawyers should be brought under one central control, namely, the All-India Bar Council. Though this bill does not go so far as that, it certainly makes a beginning in that it says that the advocates who are enrolled in the Supreme Court will be entitled to practice in the High Courts notwithstanding the fact that they have not been enrolled in such High Courts themselves. The Minister unfortunately stopped short of the very ideal which he set before himself. He said that it was his intention that the advocate who is enrolled as a member of the Supreme Court Bar should be enabled to go and appear in the province from which the case emanated even though he was not enrolled as an advocate of that court. If you merely substitute for the word "Madras" in the instance which the Hon. Minister gave by the word "Bombay" and then apply all the process step by step, which he took us through, you will find that the object, when he says is embodied in this Bill, is not carried out. I will repeat the instance myself.

Suppose a case emanates from Bombay and if chances that an advocate from Madras is engaged to appear before the Supreme Court on an appeal. It is possible for the Supreme Court to remit the case not only to the appellate side of the High Court but even send it back for a finding to the original side of that court. That advocate who studied and prepared the case and spent a lot of time over

it—the client too must have spent a lot of money, as the Minister said, in briefing and instructing that particular advocate—would be prevented from appearing on the original side, just because the exception has been introduced in the Bill. Let me look at the rationale of the exception introduced...

Dr. Ambedkar: There is no logic in it I confess.

Shri Venkataraman : He has taken the argument out of my mouth.

Dr. Ambedkar: I do not accept logic ; I accept expediency.

Shri Venkataraman : ' So I shall proceed on the basis that there is no logic.....

Mr. Chairman: May I ask the hon. Minister if a question of fundamental rights under article 22 is not involved in this?

Dr. Ambedkar: We have just now heard from several Judges that they are prepared to make classifications.

Shri Venkataraman: Article 22 of the Constitution gives the right to legal practitioners to appear in all courts. This Act will certainly be challenged by some enterprising lawyer some day and there is no doubt about it.

Apart from that I want to bring to the attention of the Hon. Minister that he will lose nothing by deleting part (a) of the proviso to clause 2. I understand that in Bombay also they have abolished the distinction between the advocates of the original side and the advocates of the appellate side.....

Dr. Ambedkar: They allow them to go from one side to the other after a certain period.

Shri Venkataraman: The practice which was hitherto prevailing of practitioners on the appellate side not being entitled to appear in cases on the original side has gone and today the practitioners on the appellate side can still appear on the original side as in the Madras High Court. So far as the Madras high Court is concerned there is no distinction between a practitioner on the appellate side and a practitioner on the original side. An advocate of the Madras High Court can appear on both the appellate and original sides.....

Dr. Ambedkar: They go without shoes also.

Shri Venkataraman: There are customs and customs. I can see quite a few of people here which would be appalling to my countrymen.

We are not concerned with footwear here but with the legal rights of the practitioners. A practitioner of the Bombay High Court is also placed on the same footing. The difference between the Bombay and Madras High Courts consists in this: whereas in the High Court of Madras there is no dual system, an advocate need not necessarily be instructed by an attorney or solicitor for appearing on the original side, in the appellate side they have got that system in which the practitioner on the original side must be instructed by a solicitor or an attorney. I can understand solicitors and attorneys insisting on their privileges being

preserved for them. So far as their rights are concerned, let them be preserved. Let any practitioner appear but let him be instructed or briefed by an attorney or solicitor. If that is the object it can very well be preserved and achieved by deleting the words " to plead *".* Any practitioner of the Supreme Court can be prevented from going before the High Court of Bombay or any other High Court on the original side. This Bill as stands with part (a) of the proviso will make it impossible for a practitioner of the Supreme Court to appear on the original side notwithstanding the fact that he had appeared in that particular case itself before the Supreme Court and the case had been remitted to the original side of that court.

An Hon. Member: Let him continue tomorrow. It is five o'clock.

The House then adjourned till a Quarter to Eleven of the Clock on Friday, the 20th April, 1951.

SUPREME COURT ADVOCATES (PRACTICE IN HIGH COURTS) *BILL-concld.*

Mr. Speaker: We will now proceed to legislative business, namely: The further consideration of the motion moved by Dr. Ambedkar yesterday:

" That the Bill to authorise advocates of the Supreme Court to practise as of right in any High Court, be taken into consideration."

Shri Venkataraman (Madras): Yesterday, I was submitting that this Bill is a welcome measure, but that the provision militates against the very object of the Bill. I was trying to show how.....

The Minister of Law (Dr. Ambedkar) : To cut short the proceedings, I may say I am prepared to accept the amendment, subject of course, to other understandings.

Shri Venkataraman : I am very grateful to the hon. Law Minister for accepting the suggestion and so I whole-heartedly support the Bill without clause (a) in the proviso.

Pandit Thakur Das Bhargava (Punjab) : I rise to support the Bill.....

..... With regard to proviso (b) I have a point to submit. Proviso (b) is to the effect:

" (b) to practise in a High Court of which he was at any time a Judge, if he had given an undertaking not to practise therein after ceasing to hold office as such Judge. "

I submit that the prohibition to practise in the High Court by a man who is an ex-Judge of that High Court should not depend on any undertaking. Public policy requires that an ex-Judge of a high Court should not practise in that Court, but the proviso makes it conditional upon an undertaking having been given. There are many High Courts where no undertakings have been taken. Therefore, if ex-

Judges are to be prohibited from practising in the particular Court, it should be independent of any undertaking given. There is an Article in the Constitution prohibiting all ex-Judges from practising in any Court—not merely in the Court where he was a Judge but in all other Courts. I submit proviso (b) militates against that. This proviso would allow an ex-Judge to practise in a High Court if he has not given an undertaking. The Constitution, however, says that all ex-Judges are prohibited from practising in any High Court.

Dr. Tek Chand (Punjab): Judges appointed after the coming into force of the Constitution.

Dr. Ambedkar: Yes, that is the rule.

Mr. Chairman: The question of amendments will come later. Perhaps it may be that after the Hon. the Law Minister has given his reply many of the doubts of the hon. members may be cleared up. Then we can think of the amendments.

Dr. Ambedkar: Most of the questions that have been raised in the course of speeches delivered by hon. Members have very little to do with the merits of the Bill. They deal with a subject which is more relevant to the unification of the Bar. As I said yesterday, this Bill primarily does not aim at the unification of the Bar. The aim of the Bill is a very limited one and is to remove the difficulties that are caused by enrolment of advocates by the High Court and by the Supreme Court in their independent jurisdiction. Clients have suffered on account of the fact that lawyers whom they engage in the Supreme Court are not permitted to appear in a High Court when the same matter is remitted by the Supreme Court to the High Court. That is the limited purpose of this Bill. But in view of the general desire that while achieving this limited purpose something might be done in the direction of unifying the Bar, I have accepted two proposals which really are outside the immediate object of the Bill.

One is to permit all lawyers who are enrolled in the Supreme Court to practise in all the high Courts which of course means right to practise in all courts subordinate to the different High Courts.

The second point which I have accepted is to remove the restrictions originally placed in the Bill that the right to practise which is being given by this Bill to advocates enrolled on the Supreme Court shall be confined only to the appellate side. The clause is being deleted.

I have listened to the various speeches and all that I can say is that I realise the difficulties and I have a great deal of sympathy with the point of view that has been expressed by the various Members. When there is an opportunity and time the Government of India will no doubt consider this matter and bring forth a comprehensive measure which would bring about the unification of the Bar in India which is a subject at the heart of many Members here. I will, therefore, not go into that aspect of the question.

Then there remains only one question which was raised by my friend Pandit Thakurdas Bhargava which also, I think, is quite outside the merits of the Bill. There is no doubt about it that anything that we do here in Parliament must always be subject to the provisions of the Constitution. If article 22 of the Constitution permits a legal practitioner to be engaged by an accused person to defend himself and if by the rules of enrolment enforced either by the High Court or by the Supreme Court a certain person does not become a legal practitioner within the meaning of the Constitution, in my mind there can be no doubt that the rules made by the High Court or by the Supreme Court would be at variance with the Article of the Constitution and the Constitution would prevail. At this moment all I would like to say is that I am not quite certain in my mind in what sense the term ' legal practitioner ' is used in the Constitution. Whether it is used in the general popular sense that anybody who can go to a court of law and appear in any matter is a legal practitioner, or whether the Constitution uses the term in the technical sense that a legal practitioner means a person defined to be a legal practitioner either in the Legal Practitioners Act or in the rules made by the High Court or the Supreme Court, is a matter on which I do not propose to express any opinion. My friend Pandit Thakur Das will also realise that even the Legal Practitioners Act does not give the general right to practise to all those who are defined as legal practitioners. There are fields which are earmarked or rather which are limited to certain classes. For instance the pleaders and the *mukhtiars* are no doubt legal practitioners within the meaning of the Act, but as he knows they have no general right to practise, nor is their right to practise a permanent one. Their certificates are annual certificates and when these certificates are exhausted they cease to be legal practitioners. All these things to my mind are quite irrelevant for the purposes of the Bill and they will no doubt take care of themselves when the matter is raised before a court of law. I do not think there is any other thing that calls for any explanation.

Mr. Chairman : The question is:

" That the bill to authorise advocates of the Supreme Court to practise as of right in any High Court be taken into consideration. "

The motion was adopted.

Clause 2.—*(Right to practise in any High Court)*

Mr. Chairman: May I know whether the Hon Minister, is accepting any of the amendments?

Dr. Ambedkar: I am not accepting any amendment except No. 7 by Shri Ahmed Meeran to delete part (a) of the Proviso. But of course my friend will realise that some little redrafting will be necessary because if (a)goes (b) will have to be renumbered.

Mr. **Chairman :** I think the Hon. Minister wishes to reply so far as this part of the question is concerned.

Dr. Ambedkar : My hon. Friend has really explained the position and I do not think I have very much to add : but to make it simpler than he has done, the position is this. Article 220 of the Constitution applies to future Judges who have taken the position of High Court Judges after the commencement of the Constitution. Their going to practise either before the Supreme Court or before any Court, whether a High Court or subordinate court, cannot arise at all.

Dr. Tek Chand: In India.

Dr. Ambedkar: Yes, in India. Because, article 220 specifically says so. We are really dealing with the case of High Court Judges who were Judges before the Constitution came into existence. As my hon. friend pointed out, those Judges of the High Court before the commencement of the Constitution may be divided for the purpose of argument, into two classes: those who had given an undertaking that they will not practise in their Court and those who had not given an undertaking. All that this proviso seeks to do is to bind down those High Court Judges who had already given an undertaking. That is the simple position. Of course, it would be perfectly possible for this House to widen the scope of the proviso and to say that no High Court Judge even though he may not have given an undertaking should be permitted to practise; that is within the power of the legislature. But, the point is this. Those people accepted the positions on the definite understanding that they will be permitted to practise after their retirement and it would be wrong and unfair now for us to make a retrospective piece of legislation and say that even though they did not give an undertaking, they will still be bound down to this new rule, namely, that they shall not practise. That is why sub-clause (b) is so restricted and is made applicable only to those who have given an undertaking. Therefore, it creates no kind of injustice.

Shri Naziruddin Ahmed : May I point out that the proviso (b) is not confined to those Judges who were Judges before the Constitution ? The proviso says " to practise in a High Court of which he was at any time a Judge ..... and not before the Constitution.

Dr. Ambedkar: The point is, the other question does not arise because it has been dealt with categorically by the constitution.

Shri Naziruddin Ahmed: That if what I say.

Dr. Ambedkar: Why do you want to do something that the Constitution has done ? There is no question of undertaking as such. That matter has been finally settled by the Constitution both in the case of the Judges of the Supreme Court and in the case of the Judges of the High Courts. We are dealing with a pass which was uncovered by law and was regulated only by promises, conventions

and undertakings.

Mr. Chairman: Would the Hon. Minister clarify one point more? Were those Judges who wanted to get their right of practice after the Constitution was passed, given an option to resign and cease to be Judges ?

Dr. Ambedkar: They knew the position and some of them, when the Constitution was on the anvil.—1 know two or three gentlemen—resigned, because they would not accept that position. Everybody knows that.

Shri J. R. Kapoor: May I say for the information of the House that Judges were given the option to resign and there have been some cases of resignation. There was one in Allahabad. One of the Judges of the Allahabad High Court resigned merely because of this new article.

Mr. Chairman: There was one in Calcutta High Court also.

Dr. Ambedkar: For the information of the House. I might mention that every Judge of a High Court now who has retired has given an undertaking not to practise. There are only two gentlemen, fortunately they are alive, who have not given that undertaking *(An hon. Member*: One is here) The scope of what was called a trouble is so limited.

Mr. Chairman: Mr. Meeran may move the amendment.

Dr. Ambedkar: That has already been moved.

Shri Venkataraman: I only spoke on it in the general discussion.

Mr. Chairman: May I know whether hon. Members agree that this bill could be put through in five minutes?

Several Hon. Members: Yes.

Shri J. R. Kapoor: I would like to have a couple of minutes while clause I is taken up, because I have strong feelings on the subject.

Mr. Chairman: The House will stand adjourned to 2-35 P.M.

The House then adjourned for Lunch till thirty-five Minutes Past two of the Clock.

The House reassembled after lunch at Thirty Five Minutes passed two of the Clock.

(PANDIT THAKUR DAS BHARGAVA IN THE CHAIR).

Mr. **Chairman:** And so only two amendments have been moved. I shall now put them to vote.

Shri Meeran : And No. 7 may be put before No. 6.

Shri Kapoor: With your permission, and if the Law Minister agrees, may I suggest that the " explanation " may be deleted ?

Dr. Ambedkar: No, the explanation is necessary. I will explain why it is necessary later, when Mr. kapoor moves his amendment to another Bill.

Clause 2 as amended was added to the Bill.

Mr. **Chairman**: Does the hon. Minister want to reply ?

Dr. Ambedkar: A reply is unnecessary.

Mr. Chairman : The question is:

" That clause I stand part of the Bill. " The motion was adopted. Clause I was added to the Bill. The Title and the Enacting Formula were added to the Bill.

Dr. Ambedkar: I beg to move: " That the Bill, as amended, be passed. "

The motion was adopted.

5

OF CIVIL PROCEDURE (AMENDMENT) BILL.

The Minister of Law (Dr. Ambedkar): I beg to move for leave to introduce a Bill further to amend the Code of Civil Procedure, 1908.

Mr. Speaker: The question is:

" That leave be granted to introduce a Bill further to amend the Code of Civil Procedure, 1908."

The motion was adopted.

Dr. Ambedkar: I introduce the Bill.

6

CODES OF CIVIL AND CRIMINAL PROCEDURE (AMENDMENT) BILL

The **Minister of Law (Dr. Ambedkar)** : I beg to move:

" That the Bill further to amend the Code of Civil Procedure, 1903, and the Code of Criminal Procedure, 1898, be taken into consideration. "

This Bill seeks to make a change in the jurisdiction of the subordinate judiciary. As the House knows the Constitution gives courts in India the right to declare whether any particular law made by the legislature, Central or provincial, is *intra* or *ultra vires* of that legislature. This power is now being exercised by all the subordinate judges and members of Parliament must have been aware that some very curious decisions have been given by various subordinate courts holding certain laws to be *ultra vires.* It is felt that it would not be right to leave this power of declaring whether the laws made by the State are *intra* or *ultra vires* to the subordinate judiciary.

First of all, without meaning any offence to members who are holding it, the subordinate judiciary cannot be said to be qualified to deal with problems involving *intra vires* or *ultra vires* of a law. Secondly, the Bar which appears generally before the subordinate courts cannot also be said to be competent to help the courts to come to a correct decision on such points. It is therefore felt that in the interest of uniformity of decision on questions of constitutional importance it is right that the power to declare any law *ultra vires* should be withdrawn from the subordinate judiciary. The Bill follows the procedure which exists in some of the States in the U.S.A., where also by law the subordinate

judiciary is prevented from giving judgements on questions of constitutional importance.

Besides this there is nothing very special in this Bill. We propose to amend by this Bill section 113 of the Civil Procedure Code by the addition of a proviso whereby the subordinate judge is required, in case he is of opinion that any particular law is *ultra vires,* to refer the matter to the High Court and to await the decision of the High Court. It is also proposed to amend section 432 of the Criminal Procedure Code requiring a magistrate also to refer the case to the High Court if the magistrate thinks that the Act is *ultra vires.*

This is all there in this Bill, which I commend to the House.

Mr. Chairman : Motion moved :

" That the Bill further to amend the Code of Civil Procedure, 1908, and the Code of Criminal Procedure, 1898, be taken into consideration."

Dr. Tek Chand : .....I submit that this Bill is based on very sound principles and that it should be passed without further discussion.

I have to say a word with regard to the observations made by my hon. friend Shri Shiv Charan Lal. He thinks that after the words " Act, Ordinance and regulation, " which are already in the Bill, should be added the words " rules or orders ", that is to say, when a question relating to the validity of a particular rule or particular order passed under an Act, Ordinance or regulation arises and this should also be referred to the High Court in the same manner as the Bill provides for points relating to the validity of an Act, Ordinance or Regulation itself. With respect, I would say that it is not necessary nor desirable that every little case in which is involved the validity of an order passed by a Collector or some other officer to whom power has been delegated to frame a rule or pass an order, be sent to the High Court. This will unnecessarily swell the number of cases in which references are to be made to the High Court. What the bill proposes to take there are three cases of major importance: (i) Act of the Central Legislature or Act of one of the State Legislatures, and (ii) Ordinances which stand on the same footing as Acts of the legislature and (iii) Regulations. It is not every Regulation but only those passed in Bengal, Bombay and Madras, or Regulations as defined in the General Clauses Act of 1897. These are Regulations of old days, promulgated before legislatures had been established but which have been retained on the Statute Book and, therefore, they have the same force and are on the same footing as Acts and Ordinances; as for instance Regulation III of 1818. The Bill, therefore, applies to those cases only in which the validity of an Act of a Legislature is involved and not the validity of an order passed by a Collector or by a Secretary to Government or some other officer, acting under power delegated to him. These do not come within the purview of the Bill and

rightly.

Sir, I think this is a salutary provision and the Bill should be passed as it is.

Dr. Ambedkar: May I be permitted to adopt the observations of my hon. friend Dr. Tek Chand in view of the fact that there is very little time and also because there is very little that I need say in addition to what he has already said here? We discussed these questions and he has now expressed what I would have expressed if I had the chance. I think that should suffice. If there is any point arising out of any amendment or things like that, then certainly I shall deal with them.

Mr. Speaker: The question is :

" That the Bill further to amend the Code of Civil Procedure, 1908 and the code of Criminal Procedure, 1898, be taken into consideration. "

The motion was adopted.

Clause 2.—*(Amendment of Act Vof1908.)*

Shri Shiv Charan Lal: I have an amendment to this clause which I shall move, incase the Hon. Law Minister is willing to accept it. Otherwise I will not move it.

Dr. Ambedkar: No, it is not the intention to accept it.

Shri K. Vaidya: Sir, Rule 2 of Order XLVI and Rule 5 of the same Order seem to be inconsistent and I would like to have some clarification of the position from the Hon. Law Minister. I am referring to my amendments Nos. 2 and 3 of List No. 3. Amendment No. I I am not moving. I had already raised this point before and I would like to hear what the Hon. Law Minister has to say.

Dr. Ambedkar: I am not prepared to accept the amendments proposed by my hon. friend because I do not think it is right and proper that all the proceedings in a case should be stayed.

Mr. Speaker : But Mr. Vaidya is not moving his amendment No. I asking for that.

Dr. Ambedkar: Yes, Sir, but the other amendments he 4-00 P. M. refers to are consequential to his amendment No. 1. If that is not moved then there is no substance in the other amendments.

Shri K. Vaidya: They are not consequential because.....

Mr. Speaker: Let him explain the position first.

Dr. Ambedkar: As I understand it, the position is this. It is suggested that when a reference is made by the subordinate court to the High Court, all further proceedings in the matter should stay. That is the fundamental point of the hon. Member. That Court should do nothing until the High Court returns the papers with its interpretation. With that position I entirely disagree for this reason that a case might involve one issue of a constitutional nature and many other issues which may have nothing to do with the Constitution. And I do not understand why

a magistrate who is required under this Bill to make a reference to the High Court on one of the many points which are involved in the case should be debarred from proceeding further with the other issues. Therefore I am not prepared to accept his first amendment whereby he wants:

That in part (i) of clause 2, in the proposed Proviso to section 113 of the Code of Civil Procedure, 1908, the words " and shall stay the further proceedings in the case " be added at the end.

The rest of them are purely consequential.

Shri K. Vaidya: They are not, I submit, consequential because Rule 2 of Order XLVI as well as Rule 5 of Order XLVI relate only to cases where judgements are given and in a case where an issue has been referred to the High Court there will be no judgement. Under Rule 4 of Order XX the issue should be decided and only then can there be a judgement, and Rule 2 of Order XLVI refers only to cases in which judgement is given. Rule 5 also refers to cases where judgement is given. Therefore these two rules are inconsistent or inapplicable to this Bill.

Dr. Ambedkar: I would point out that it is left to the discretion of the subordinate judge. He may make an order staying proceedings or he may not. My hon. friend wants that the discretion of the subordinate judge should be taken away and in all cases he should make an order staying the proceedings. Therefore I am not going to accept his amendment.

Mr. Speaker: Is the hon. Member keen on moving his amendment ?

Shri K. Vaidya: No, Sir.

Mr. Speaker: Then I shall put clause 2 to vote. The question is: " That clause 2 stand part of the bill. "

The motion was adopted. Clause 2 was added to the Bill. .

Clause 3.—*Substitution of new section : Amendment made:*

In clause 3 for the words " said Code " substitute the words and figures " Code of Criminal Procedure, 1898 ".

—[*Dr. Ambedkar]*

Shri Shiv Charan Lal: So far as the Civil procedure code is concerned, an Order has not got much importance. But so far as the Criminal Procedure Code is concerned, Orders have the same force as an Act. I may point out that under the Defence of India Act, so many orders were passed by the different state Governments and these orders had the force of law. So if you are placing the words "Act, Ordinance and Regulation ", then the word " Order" also must be there, because in the Criminal Courts, these Orders have the force of law. I do not mean the ordinary Orders, but Orders like the Cotton Yarn and Cloth control Order, the Sugar Control Orders and other such orders which have the force of law. They are sometimes challenged in the courts whether those orders are valid

or not. Simply putting the word "Act" before will not do.

The other amendment of mine is that in sub-clause 2 of section 432 along with presidency magistrate if the words ' sessions judge are added that will give a great scope for the Sessions Judge ' also to refer the matter to the high court. If the Minister accepts the amendments I will move them, otherwise not.

Dr. Ambedkar: With regard to the first amendment to clause 3 introducing the words "or order" the position is that an order is generally issued under a law made by the legislature. If the contention of a party is that the law under which the order is issued is *ultra vires,* then obviously the matter will have to be referred by the judge to the High Court, if he is satisfied with the contention. But if the contention of the party is that the law is valid but the order is not, then it is the deliberate intention of this Bill that such a matter should be decided by the subordinate judge or magistrate, because we do not propose to overburden the High Court with all kinds of litigation which can be easily determined by the subordinate judge and it does not affect the generality of the public but the particular individual affected by that legislation.

With regard to the last amendment seeking to extend the privilege or the opportunity given to the presidency magistrate, to sessions judges, if he will refer, for instance, to sections 436, 437 and 438 of the Criminal Procedure Code there is ample power given both to the magistrate and the sessions judge to deal with cases of this sort to correct the error or refer the matter to the high court to get the error corrected. There is ample provision already.

Mr. Speaker: The question is: " That clause 3, as amended, stand part of the Bill. "

The motion was adopted.

Clause 3, as amended, was added to the Bill. Clause I was added to the Bill. The title and the Enacting formula were added to the Bill.

Dr. Ambedkar: I beg to move : " That the Bill as amended be passed. "

Mr. Speaker: The question is : " That the bill, as amended, be passed. "

The motion was adopted.

(31)

CODE OF CIVIL PROCEDURE (SECOND AMENDMENT) BILL

The Minister of Law (Dr. Ambedkar) : I beg to move :

" That the bill further to amend the code of Civil Procedure, 1908, be taken into consideration. "

It is a very simple measure. Hon. Members will recall that after the partition of India certain difficulty has arisen in the matter of serving summonses and processes by courts in India to persons resident in Pakistan and issued by courts in Pakistan to persons resident in India.

[PANDIT THAKUR DAS BHARGAVA *in the Chair]*

There are now two foreign territories and this matter has not been governed by any treaty so far. Consequently all processes had to be served through the post office which can never be depended upon as a sure method of communication. Recently an agreement has been made between India and Pakistan where both countries on a reciprocal basis have agreed that the processes issued by courts in one country may be sent to the courts in the other country and they will undertake to serve the summonses or the processes on the party resident there. The Bill seeks to give effect to this agreement. I might say that Pakistan has already given effect to this agreement and there is a law existing there. I hope the House will accept this Bill.

Mr. Chairman: Motion moved :

" That the bill further to amend the Code of Civil Procedure, 1908, be taken into consideration. "

Shri Sidhva (Madhya Pradesh): This is a welcome measure. Many of the displaced persons who have come here and who have claims over persons in Pakistan are confronted with the difficulty of not being able to recover the sums decreed on suits. I am glad that agreement has been arrived at between India and Pakistan and that Pakistan has also enacted a similar law. The question of serving a summons on the other side has been overcome. I want to enquire from the Minister in the event of a decree passed here against a person in Pakistan, is there any agreement arrived at by which they will see that it is executed and the amount is recovered and sent to the plaintiff in India. That is the main point involved in this question. Merely serving a summons will not do. The defendant may be indifferent and an ex-parte decree may be obtained. So long as there is no law regarding the execution of a decree why should the defendant spend money to engage a lawyer. Nothing is mentioned in that respect. I would like the Minister to enlighten us whether this question was considered in the discussion with Pakistan and if not, what will be the effect of the judgement of a court in India, which might pass a decree against a defendant in Pakistan? Without this provision the Bill will have no meaning.

Dr. Ambedkar: As a part of the comity of nations every country agrees to execute judgements given by courts in other countries. Of course different countries have different rules of procedure but there is no difficulty with regard to the enforcement of the judgements. Some evidence that the judgement is a true one may be required. Section 13 of the Civil Procedure Code regulates it.

Shri Naziruddin Ahmad (West Bengal): A foreign judgement cannot be executed in any country at all. The Civil Procedure Code does not provide for it. A foreign judgement gives only a right of suit and a fresh suit has to be instituted and a fresh decree has to be obtained.

Dr. Ambedkar: That is only a matter of procedure.

Shri Naziruddin Ahmed: The whole thing has to be fought out again. The point I am raising is that a foreign decree cannot be executed.

Shri Sidhva: I want your guidance. I remember a case filed in India against a defendant in England. The decree was passed here but they could not execute it. A fresh suit had to be filed in London. I wonder whether without any such agreement a decree will have any value.

Dr. Ambedkar: Section 13 of the Civil Procedure Code does deal with the matter. There is no question about the enforcement of a foreign decree. The question is what procedure each country may adopt.

Shri Sidhva: That has no meaning.

Dr. Ambedkar: What has no meaning? It may say just as in the case of an award you will have to file an application when only it becomes enforceable. In the same way, section 13 of our Civil Procedure Code says :

" A foreign judgement shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except—

(a) where it has not been pronounced by a Court of competent jurisdiction; ".

The question of jurisdiction is always fundamental. It can never be stopped. It must be proved that the court which has given the decree had the jurisdiction to make the decree.

Shri Sidhva: That is all right.

Dr. Ambedkar: What is all right? If you go to a subordinate court and get a decree beyond its jurisdiction nobody can execute it because it is not valid.

Mr. Chairman : The question is :

" That the bill further to amend the Code of Civil Procedure, 1908, be taken into consideration. "

The motion was adopted. Clause 2 was added to the Bill. Clause I was added to the Bill. The Title and the enacting formula were added to the Bill.

Dr. Ambedkar: I beg to move: "That the Bill be passed."

Mr. Chairman : The question is: " That the Bill be passed. "

The motion was adopted.

7

JALLIANWALA BAGH NATIONAL MEMORIAL BILL

The Minister of Law (Dr. Ambedkar) : I beg to move : "That the Bill to provide for the erection and management of a National memorial to perpetuate the memory of those killed or wounded on the 13th day of April, 1919 in Jallianwala Bagh, be taken into consideration. "

The event which is known as Jallianwala Bagh is well-known to every Indian

and I do not think it is necessary to say anything more about it. What is relevant for purposes of this Bill is that soon after the incident certain well-known Indians decided to prepetuate the memory of those who were killed and wounded on that particular day.

Dr. Tek Chand (Punjab); The session of the Indian National Congress held at Amritsar under the presidency of Pandit Motilal Nehru decided it.

Dr. Ambedkar: Yes, and they collected an amount of money—some ten lakhs, I understand.

Dr. Tek Chand: Yes, ten lakhs.

Dr. Ambedkar: Out of that they purchased two or three pieces of land as are mentioned in the Schedule, which are being held as part of this trust. There is already a trust and trustees, but they are of informal character. It is now proposed to give this trust a statutory basis and the proposal is this, that the trustees will fall into three different classes : certain trustees who are to be life trustees, another set of trustees who are to be *ex officio* trustees, and three other persons who will be nominated by the Central Government. They will hold the land and the properties mentioned in the first part of the Schedule and the cash and movable property which according to my calculation comes to about Rs. 3,13,757-1-0. The object of the trust is to maintain this Memorial and to see that it is kept up and looked after properly.

There is only one point that requires to be considered and that is that the original trustee mentioned in the Bill, the late Sardar Vallabhbhai Patel is now no more, and the House has to consider a substitute for him. The rest of the Bill is just as it was proposed by the original trustees who were acting as trustees for these purposes.

Mr. Chairman: Motion moved :

" That the Bill to provide for the erection and management of a National memorial to perpetuate the memory of those killed or wounded on the 13th day of April, 1919, in Jallianwala Bagh, be taken into consideration. "

Shri Kamath (Madhya Pradesh): It is in the fitness of things that a Bill of this nature has been brought before this House. It is over thirty years ago that this massacre at Jallianwala Bagh took place and hundreds of our countrymen and women were either killed...

Dr. Tek Chand : Two thousand—not hundreds.

Shri Kamath: Killed?

Dr. Tek Chand: Yes, two thousand killed.

Shri Kamath: .....thousands were either killed or wounded. The Congress, as the statement of objects and reasons shows, passed a resolution in 1919 proposing to acquire a piece of land and to build a memorial thereon to the

martyrs of Jallianwala Bagh. We have not been told by the Law Minister who moved the Bill what amount exactly was collected for this purpose. He said "about ten lakhs', but he has not got the exact figure with him.....

Dr. Ambedkar: I said about ten lakhs—I can give the exact figure later.

Shri Kamath:..... .and how much of that amount has been utilised in acquiring the site whereon the proposed memorial is to be erected. It is wholesome that Government, the first Government of Free India, should take note of a resolution passed by the Congress many years ago and try to give effect to it. But, Sir, alongside of this certain other questions also arise. As I have already said, the Bill seeks to perpetuate the memory of the martyrs of Jallianwala Bagh and to implement the resolution of the Indian National Congress of December, 1919. That marked the beginning of the Gandhian era in our politics, and during that period the Congress raised, or has raised, several funds of different kinds. An important point, therefore in connection with this Bill which has been moved by the Law Minister is, how far the Government will take note of or take cognisance of other funds also raised by the Congress for a specific purpose.

Shri Bharati (Madras): On a point of order, Sir, How far is that relevant to the Bill before us ? The hon. Member is referring to funds raised by the Congress for other purposes. Are we concerned with that in this Bill?

Shri **Kamath:** Of course, it is a resolution passed by the Congress that is the genesis of this Bill.

Mr. Chairman: There is no point of order. Let the hon. Member develop his argument.

The Minister of Law (Dr. Ambedkar): After the speeches which have been delivered by my hon. Friend Dr. Bakhshi Tek Chand, the Prime Minister and Pandit Thakur Das Bhargava, I do not think that there is any point left which requires any answer. They have dealt with all the questions that have been raised by the various speakers in the course of this debate, particularly with regard to representation of certain interests on this trust. I think they have been effectively answered and I have nothing more to add.

Mr. Chairman: The question is :

"That the Bill to provide for the erection and management of a National Memorial to perpetuate the memory of those killed or wounded on the 13th day of April, 1919, in Jallianwala Bagh, be taken into consideration. "

The motion was adopted.

Shri J. R. Kapoor (Uttar Pradesh): *(English translation of the Hindi speech.)* I beg to move: In clause 2, for " National Memorial " substitute " Rashtriya Smarak".

My submission is that it is but in the fitness of things that the name of this

National Memorial should be in the national language. We must give appropriate name to a thing and the name of the National Memorial which we are going to erect should be such as easily understandable to everybody in the country. By giving it a name in English, we shall be depriving a large number of people of easily understanding its importance. Therefore, I submit that it should be named Jallianwala Bagh Rashtriya Smarak. I hope and believe that the hon. Minister would agree to my humble request by accepting this amendment. I have nothing more to add in this connection.

Dr. Ambedkar: I am afraid I cannot accept this amendment.

Shri J. R. Kapoor: I do not want to press it. If the hon. Minister does not accept it, he may put this name within brackets as is also done with the name of our country Bharat which is also written within brackets.

Dr. Ambedkar: I am afraid, I cannot accept this.

Shri J. R. Kapoor: Then I do not press it.

Mr. Chairman: The question is. " That clause 2 stand part of the Bill. "

The motion was adopted. Clause 2 was added to the Bill. **Clause 3.**--*(Objects of the Trust)*

Shri Kamath (Madhya Pradesh): I beg to move:

In part (c) of clause 3 for " raise and receive " substitute " raise, receive and administer".

The sub-clause, as it stand, reads thus: " The objects of the Trust shall be—

...(c) to raise and receive funds for the purposes of the Memorial." It stands to reason that the Trust shall be formed not only for the purpose of raising and receiving funds but also for the

purpose of administering them. Otherwise the enumeration of its duties and functions would be incomplete. I therefore move this amendment and commend it for the acceptance of the House.

Mr. Chairman: I wish to know whether any other amendment is going to be moved.

Shri J. R. Kapoor: I beg to move: After part (c) of clause 3, insert new part:

" (d) to do any other thing in furtherance of the objects of the Trust ".

So that, there will be one more object added to it, not of any specific nature but merely of a general nature so that the trust may not feel handicapped at any time in regard to anything that it may like to do. I am sure this will be readily acceptable to the hon. Minister in charge of the Bill. Such a clause is almost invariably to be found in other similar enactments.

Mr. Chairman: The wording of the amendment is self-explanatory and I do not think any further speech on it is necessary.

Sardar B. S. Man: I beg to move:

After part (a) of clause 3, insert new part and reletter subsequent parts accordingly:

" (b) to start educational, social or such other public institutions, or to create funds or scholarships for the benefit of the public generally, or for those or their dependants, who were killed or wounded on the 13th day of April 1919 at the site, or for such other people who served, died or were permanently disabled in the national cause. "

The objects of the Trust as given in the Bill are merely, " to erect and maintain suitable buildings, structures and parks at or near the site of the Jallianwala Bagh in the city of Amritsar ..... etc. " I feel that by the acceptance of this amendment it will be enlarging to scope and making it more a living memorial to the memory of those who have departed.

Mr. Chairman: May I know whether any of the amendments are acceptable to the Hon. Minister?

Dr. Ambedkar: I do not think I can accept any of them. Perhaps a word might be necessary as to why I do not accept them.

With regard to Mr. Kamath's amendment the addition of the word " administer " is unnecessary. Every trust carries with it the power of the trustees to administer whatever they receive and raise.

With regard to Mr. Kapoor's amendment " to do any other thing in furtherance of the objects of the Trust", that again is unnecessary. When the objects are stated it carries with it the implied power to do anything in furtherance of these objects.

With regard to Sardar Man's amendment, I think it is agreed that this body of trustees should not convert themselves into a social service league. Their purpose should merely be to maintain this national monument.

Shri Kamath: May I not ask whether the word "receive" also is unnecessary ? Whatever is raised must be received by the Trust. Therefore " received " may be deleted.

Dr. Ambedkar: That may be so, but I think " administer " is quite superfluous.

Mr. Chairman: I would like to know whether hon. Members are pressing their amendments.

Sardar B. S. Man: I am not pressing my amendment.

Shri J. R. Kapoor: No.

Shri Kamath: Well, it may go.

Mr. Chairman: Does he want it to be put or not put?

Shri Kamath: It need not be put.

Mr. Chairman: The question is : " That clause 3 stand part of the Bill. "

The motion was adopted. Clause 3 was added to the Bill. Clause 4.—*(Trustees*

etc.)

Shri Sidhva (Madhya Pradesh): I have an amendment.

Mr. Chairman: Is Dr. Ambedkar going to move any amendment ?

Dr. Ambedkar: Mr. Sidhva is moving.

Shri Sidhva: I beg to move:

In part (b) of sub-clause (1) of clause 4, for the name of Sardar Vallabhbhai Patel substitute the name of Dr. Saifuddin Kitchlew.

It is self-explanatory and I do not want to speak on it.

Mr. Chairman : Amendment moved:

In part (b) of sub-clause (1) of clause 4, for the name of Sardar Vallabhbhai Patel substitute the name of Dr. Saifuddin Kitchlew.

Is it acceptable to the Hon. Minister.

Dr. Ambedkar: I accept the amendment.

Giani G. S. Musafir: *(English translation of Urdu speech)* I wanted to move: After part (e) of sub-clause (1) of clause (4) insert new part and reletter subsequent parts accordingly:

" (f) the president of the Punjab State Congress. "

I have already said more than enough on that subject. Unfortunately for me the Prime Minister does not agree with me on this point. What is still more unfortunate is that he has already delivered his speech so that even those members who had promised to support me have become silent. Therefore, I feel it would be no use pressing it any more. Hence, I am not moving it. I do not agree, however, that the inclusion of the President of the Punjab Congress would turn this Trust into a party Trust.

Mr. Chairman: May I know whether the hon. Minister accepts any of those amendments?

Dr.Ambedkar: I cannot accept any of these amendments.

Shri Kamath: I want to press all the amendments.

Mr. Chairman: I will put all these amendments to the House.

Shri Kamath: One by one.

Mr. Chairman : The question is:

In part (b) of sub-clause (1) of clause 4, for the name of Sardar Vallabhbhai Patel substitute the name of Kumari Maniben Patel.

The motion was negatived.

Dr. Ambedkar: The only amendment that I can accept is No. 79 seeking to omit the word "for" in part (f) of sub-clause (2).

Mr. **Chairman:** Does Mr. Kamath press the other amendments?

Shri Kamath: I press amendment No. 82 relating to penalty.

Mr. Chairman: The question is:

(i) In part (f) of sub-clause (2) of clause 9, for " injury " substitute " damage ".

The motion was negatived. **Shri Kamath:** I do not press my second amendment.

Mr. Chairman : The question is: (iii) In part (f) of sub-clause (2) of clause 9 omit " for ".

The motion was adopted.

Mr. Chairman : The question is:

(iv) In sub-clause (3) of clause 9, for " fine which may extend to one hundred rupees " substitute :

" imprisonment for a period not exceeding six months or with fine which may extend to one hundred rupees or both. "

The motion was negatived.

Mr. Chairman: The question is: " That clause 9. as amended, stand part of the Bill. "

The motion was adopted. Clause 9. as amended, was added to the Bill.

Clause 10 was added to the Bill. The Schedule was added to the Bill.

Clause 1. *(Short Title)*

Amendment moved: In clause I, for " 1950 " substitute " 1951 ". [*Dr. Ambedkar].*

Mr. Chairman : The question is: " That clause 1. as amended, stand part of the Bill. "

The motion was adopted.

Clause I, as amended, was added to the Bill. The Title and the Enacting formula were added to the Bill.

Dr. Ambedkar : I beg to move: That the Bill, as amended be passed. "

Mr. Chairman : The question is: " That the Bill, as amended, be passed. "

The motion was adopted. *The House then adjourned for Lunch till Three of the Clock.*

(33) *The House re-assembled after Lunch at Three of the Clock.*

(PANDIT THAKUR DAS BHARGAVA *in the Chair}*

Continued...